REPORT RESUMES

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RACIAL ISOLATION IN THE PUBLIC SCHOOLS, VOLUME 1.
BY- HANNAH, JOHN A. AND OTHERS
COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C.

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THE FINDINGS OF A STUDY OF RACIAL ISOLATION IN THE PUBLIC SCHOOLS ARE DISCUSSED. THE STUDY FOCUSED ON (1) THE EXTENT OF RACIAL SEGREGATION IN THE SCHOOLS AND THE DISPARITY BETWEEN THE EDUCATIONAL ACHIEVEMENT OF NEGRO AND WHITE SCHOOL CHILDREN, (2) FACTORS WHICH INTENSIFY AND PERPETUATE SEGREGATION, (3) THE EFFECTS OF SEGREGATED SCHOOLING ON CHILDREN'S EDUCATION, ATTITUDES, AND INTERRACIAL ASSOCIATIONS, AND (4) PROGRAMS TO REMEDY EDUCATIONAL DISADVANTAGE AND RELIEVE SEGREGATION. ALONG WITH THE FINDINGS OF THE STUDY OF THESE CONCERNS, THE REPORT DISCUSSES THE LEGAL ASPECTS OF SCHOOL SEGREGATION--THE ROLE OF THE STATES, JUDICAL DECISIONS, AND CONGRESSIONAL ACTION. ALTHOUGH DATA FOR THIS STUDY WERE GATHERED IN MORE THAN 100 COMMUNITIES OF VARYING SIZE AND RACIAL COMPOSITION, GREATEST ATTENTION WAS GIVEN TO SCHOOL SEGREGATION IN METROPOLITAN AREAS. IN GENERAL, THE FINDINGS SHOWED THAT NEGRO CHILDREN HAVE LOWER ACHIEVEMENT, ASPIRATIONS, AND SELF-ESTEEM THAN WHITES, AND FACE GREATER BARRIERS IN BEING UNDERSTOOD IN SCHOOL AND IN THE COMMUNITY. IMMEDIATE ACTION IS RECOMMENDED FOR NEW LEGISLATION (1) TO REMOVE RACIAL IMBALANCE IN THE SCHOOLS, (2) TO ESTABLISH A UNIFORM STANDARD OF RACIAL BALANCE FOR EACH STATE, AND (3) TO PROVIDE FINANCIAL HELP FOR SCHOOL CONSTRUCTION AND FOR THE IMPROVEMENT OF EDUCATIONAL QUALITY. FAIR HOUSING LEGISLATION AND APPROPRIATIONS FOR LOW- AND MIDDLE-INCOME HOUSING UNITS WHICH WOULD BE LOCATED SO AS TO REDUCE SCHOOL SEGREGATION ARE ALSO RECOMMENDED. THIS DOCUMENT IS ALSO AVAILABLE FROM THE SUPERINTENDENT OF DOCUMENTS, U.S. GOVERNMENT PRINTING OFFICE, WASHINGTON, D.C. 20302, FOR $1.00. (NH)

RACIAL ISOLATION in the Public Schools

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

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- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;
- Appraise Federal laws and policies with respect to equal protection of the laws;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and
- Submit reports, findings, and recommendations to the President and the Congress.

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Racial Isolation in the Public Schools

Volume 1

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U.S. Commission on Civil Rights

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In particular, the Commission is indebted to the Staff Director, the Chief Consultant of the Race and Education Study, and the diligent staff of the agency:

William L. Taylor, *Staff Director*
M. Carl Holman, *Deputy Staff Director*
David K. Cohen, *Director, Race and Education Study*
Thomas F. Pettigrew, *Chief Consultant, Race and Education Study*
Martin E. Sloane, *Special Assistant to the Staff Director*
Howard A. Glickstein, *General Counsel*
David Rubin, *Deputy General Counsel*

A special debt of gratitude is owed members of the Advisory Committee for the Race and Education Study and those members of the Commission's various State Advisory Committees who gave valuable assistance to the project. A list of consultants and staff members assigned to the Race and Education Study and others who worked on various phases of this report appears at the end of this volume.

LETTER OF TRANSMITTAL

THE UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., February 9, 1967.

THE PRESIDENT OF THE UNITED STATES:

The Commission on Civil Rights presents to you its report on racial isolation in the public schools, a report prepared pursuant to your request of November 17, 1965, asking the Commission to gather the relevant facts and make them available to the Nation.

The Commission's study substantiates your belief that racial isolation in the schools serves as a deterrent to the full development of the country's human resources. It presents evidence of the harmful effects of such isolation on young people and on our society.

We hope our findings and recommendations will, as you suggested, provide the Nation with information that will serve as a basis for remedial action by local school authorities, the States, and the Federal Government—action to assure quality education for all American children.

Respectfully yours,

JOHN A. HANNAH, *Chairman.*
EUGENE PATTERSON, *Vice Chairman.*
FRANKIE M. FREEMAN.
ERWIN N. GRISWOLD.
REV. THEODORE M. HESBURGH, C.S.C.
ROBERT S. RANKIN.

THE WHITE HOUSE,
Washington, November 17, 1965.

DEAR MR. CHAIRMAN:

The future of our Nation rests on the quality of the education its young people receive. And for our Negro children quality education is especially vital because it is the key to equality.

In the past decade this Nation has moved with increasing speed toward the elimination of discrimination and segregation in education, and in housing, employment, voting, and access to public facilities and accommodations. However, long after we have done all we can to eliminate past inequities, we will continue to pay their costs in stunted lives. Because millions of Negroes were deprived of quality education and training in basic skills, because they were given to believe that they could aspire only to the most menial and insecure places in our society, they are seriously handicapped in taking advantage of opportunities afforded by new laws, new attitudes and an expanding economy. We can no longer tolerate such waste of human resources.

Although we have made substantial progress in ending formal segregation of schools, racial isolation in the schools persists—both in the North and the South—because of housing patterns, school districting, economic stratification and population movements. It has become apparent that such isolation presents serious barriers to quality education. The problems are more subtle and complex than those presented by segregation imposed by law. The remedies may be difficult. But as a first and vital step, the Nation needs to know the facts.

These problems of race and education fall within the responsibilities which Congress has assigned to your Commission, and I request it to gather the facts and make them available to the Nation as rapidly as possible. I know that the Commission will wish to consult with Secretary Gardner and Attorney General Katzenbach to obtain the benefit of their experience, and I am sure they will make the facilities of their Departments available to assist the Commission.

I trust that the task can be completed expeditiously and that your findings may provide a basis for action not only by the Federal Government but also by the States and local school boards which bear the direct responsibility for assuring quality education.

Sincerely,

LYNDON B. JOHNSON.

Hon. JOHN A. HANNAH,
Chairman, U.S. Commission on Civil Rights,
Washington, D.C.

Preface

This report on race and education has been prepared at the request of President Johnson, who on November 17, 1965, asked the U.S. Commission on Civil Rights to gather the facts bearing on racial isolation in the schools and make them available to the Nation as rapidly as possible. In making this request, the President outlined the scope and importance of the problem to which he wished the Commission to address itself. In a letter to John A. Hannah, Chairman of the Commission, the President said:

> Although we have made substantial progress in ending formal segregation of schools, racial isolation in the schools persists—both in the North and the South—because of housing patterns, school districting, economic stratification and population movements. It has become apparent that such isolation presents serious barriers to quality education. The problems are more subtle and complex than those presented by segregation imposed by law. The remedies may be difficult. But as a first and vital step, the Nation needs to know the facts.

In preparing this study the Commission first defined the limits of its inquiry and the areas of particular emphasis. In accordance with the President's request, the inquiry has been limited to school segregation resulting from circumstances other than legal compulsion. Further, priority attention has been given to the Nation's cities and metropolitan areas. Two-thirds of all Americans—white and Negro—live in metropolitan areas, and two-thirds of the Nation's school children are educated in urban schools.

The Commission's factfinding has involved four general subject areas: (1) The extent of racial isolation in the public schools and the extent of the disparity in educational achievement between white and Negro school children; (2) the factors that contribute to intensifying and perpetuating school segregation; (3) the relationship between racially isolated education and the outcomes of that education, and the impact of racial isolation on the attitudes and interracial associations of Negroes and whites; and (4) the various programs that have been proposed or put into operation for remedying educational disadvantage and relieving racial isolation in the schools.

The Commission recognized that an intensive exploration of these subject areas would involve complex issues, often of a highly technical nature. Further, there was need to collect and analyze a large volume of material in a comparatively short period of time. Therefore, the Commission sought the services of experienced individuals and organizations to assist its staff in the study. Experts and consultants were engaged to perform research in specialized areas. Papers were commissioned concerning a variety of subjects related to the problems of school segregation. All material provided to the Commission from outside sources has been analyzed by the Commission and its staff.

Conferences were held with school administrators and teachers to obtain the views and suggestions of those who have working experience in both segregated and desegregated public schools. The Commission also held hearings and conducted investigations in a number of cities to learn from parents, teachers, community leaders, and school officials how American communities are meeting problems of race and education.

Of particular assistance to the Commission has been its Advisory Committee on Race and Education, consisting of the following distinguished educators and students of American society:

Dr. Thomas F. Pettigrew (Chairman), Associate Professor of Social Psychology, Harvard University, Cambridge, Mass.

Dr. Samuel Brownell, former Superintendent of Schools, Detroit, Mich.

Dr. Benjamin E. Carmichael, former Superintendent of Schools, Chattanooga, Tenn.

Dr. Kenneth B. Clark, Director, Social Dynamics Research Institute, City College, New York, N.Y.

Mrs. Elizabeth Cole, Consultant, U.S. Office of Education, Washington, D.C.*

Dr. James Coleman, Professor of Sociology, Johns Hopkins University, Baltimore, Md.

Dr. Rashi Fein, Economist, Brookings Institution, Washington, D.C.

Dr. John H. Fischer, President, Teachers College, Columbia University, New York, N.Y.

Dr. Philip Hauser, Director, Population Research and Training Center, University of Chicago, Chicago, Ill.

Dr. Vivian Henderson, President, Clark College, Atlanta, Ga.

Dr. Peter Rossi, Director, National Opinion Research Center, University of Chicago, Chicago, Ill.

Dr. Judson Shaplen, Dean, Graduate School of Education, Washington University, St. Louis, Mo.

Dr. Neil V. Sullivan, Superintendent of Schools, Berkeley, Calif.

Mr. John Wheeler, President, Mechanics and Farmers Bank, Durham, N.C.

Dr. Robin Williams, Professor of Sociology, Cornell University, Ithaca, N.Y.

The Advisory Committee was established at the inception of the Commission's inquiry and has provided continuing guidance throughout the study. The comments and suggestions of Committee members have contributed substantially to the value of the report. Responsibility for the accuracy of the material contained in the report and for the views expressed in it, however, rests with the Commission.

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*Deceased.

In each of the four general areas of inquiry, the Commission has sought to obtain detailed information on a nationwide basis. Data on the racial composition of schools have been obtained from school systems representing more than 100 communities throughout the country—school systems of varying sizes, containing different proportions of Negro enrollment, and representative of every region. In almost all cases these data have been provided by local school officials, and the Commission is grateful for their cooperation.

The Commission also examined and evaluated the factors that contribute to the perpetuation and intensification of school segregation. Factors relating to population movement within metropolitan areas and the impact of residential segregation were examined closely by Dr. Karl Taeuber of the University of Wisconsin, who prepared special studies for the Commission of trends in the distribution of white and nonwhite populations within representative metropolitan areas. Commission staff explored the impact of residential segregation on racial concentrations in schools, both in a metropolitan context and within central cities. Federal housing policies and practices were analyzed to determine their effectiveness in counteracting residential segregation, and the impact of Federal housing programs on racial concentrations in schools was investigated in a number of cities.

Dr. Charles Benson, of the University of California at Berkeley, working in conjunction with the Dumbarton Research Council, was engaged to assist in analyzing the fiscal disparities between city and suburban school systems. The equalizing effect of State and Federal financial assistance programs also was evaluated.

School policies and practices were examined in a number of cities, to determine their effect on patterns of school segregation. The policies and practices of 15 school systems were investigated by Commission staff. Research teams directed by the following persons conducted intensive studies of the school systems of seven of these cities for the Commission: Boston, Mass.—Dr. Marc A. Freed, Research Professor and Director, Institute of Human Sciences, Boston College, Boston, Mass.; Philadelphia, Pa.—Dr. Howard Mitchell, Director, Human Resources Program, University of Pennsylvania, Philadelphia, Pa.; Atlanta, Ga.—Dr. Tilman Cothran, Chairman, Sociology Department, Atlanta University, Atlanta, Ga.; St. Louis, Mo.—Herbert Semmel, Associate Professor of Law, College of Law, University of Illinois, Champaign, Ill.; Milwaukee, Wis.—Ralph Showalter, Executive Director, The Social Development Corporation, Washington, D.C.; Cleveland, Ohio—Dr. Willard Richan, Associate Professor of Social Work, School of Applied Social Sciences, Western Reserve University, Cleveland, Ohio; Oakland, Calif.—Sheila Spaulding, Dumbarton Research Council, Menlo Park, Calif.

In exploring the impact of racial isolation in schools on achievement and attitudes, the Commission obtained a broad range of information relating both to school achievement and student attitudes and to the development of later attitudes and associations of Negro and white adults. The U.S. Office of Education Survey, *Equality of Educational Opportunity*, provided a basic fund of nationwide data on student achievement and attitudes. These data were examined and subjected to further analysis by Commission staff with the assistance of experts and consultants. Special analysis of these data was done for the Commission by Dr. David Armor of Harvard University. In addition, the Commission engaged Dr. Alan Wilson of the University of California at Berkeley to collect similar information from a single school system—Richmond, Calif.—and to provide an analysis in depth of the same factors. The Commission broadened its inquiry beyond school experience by conducting surveys of recent high school graduates and adults. The Dumbarton Research Council of Menlo Park, Calif., under contract with the Commission, conducted a survey of the post-school attitudes and experiences of recent Negro and white graduates of the Oakland, Calif., public schools. The National Opinion Research Center of the University of Chicago, under a Commission contract, conducted a national survey of Negro and white adults, relating school experiences to later life attitudes and achievement.

Many programs aimed at remedying educational disadvantage and eliminating racial isolation in schools are currently being carried on in cities throughout the country. The Commission examined and evaluated the effectiveness of several of these programs. Dr. Marvin Cline of Howard University assisted the Commission staff in assessing data on programs of compensatory education. A research team directed by Dr. Robert Stout of the University of California at Berkeley investigated the operation of programs aimed at eliminating school segregation. The Commission conducted hearings in two cities—Rochester, N.Y. and Boston, Mass.—where programs have been initiated to foster school desegregation. The Commission also explored a number of proposals for remedial action not yet in operation, and commissioned special papers on the potential problems and advantages of innovative educational techniques from the following educators:

Dr. Don Bushnell, Associate Director, Brooks Foundation, Santa Barbara, Calif.; Dr. Paul Davidoff, Director, Urban Planning Program, Hunter College of the City University of New York, New York, N.Y.; Dr. John H. Fischer, President, Teachers College, Columbia University, New York, N.Y.; Dr. John Goodlad, University of California, Los Angeles, and Institute for Development of Educational Activities, Los

Angeles, Calif.; Mr. Francis J. Keppel, Chairman of Board of Directors, General Learning Corp., New York, N.Y.; Dr. Dan C. Lortie, Midwest Administration Center, Department of Education, University of Chicago, Chicago, Ill.; Dr. Neil V. Sullivan, Superintendent of Schools, Berkeley, Calif.; and Dr. Ralph W. Tyler, Director, Center for Advanced Study in Behavioral Sciences, Palo Alto, Calif.

Also of concern to the Commission is the current and potential role of government and the legal and constitutional aspects of continued racial isolation in the schools. The Commission surveyed Federal and State law addressed to school desegregation and examined existing case law bearing on the constitutional obligation to eliminate school segregation. In addition, the legal authority of the States and of the Federal Government to deal with the problem of racial isolation in the schools was explored.

The Commission is aware that the subject of this report is of great national concern and controversy. The President said in requesting the Commission to prepare this report:

> The future of our Nation rests on the quality of the education its young people receive. And for our Negro children quality education is especially vital because it is the key to equality.

Quality education for all children is an undisputed goal of American public education. There is sharp disagreement, however, over whether this goal can or should be achieved within the confines of racially isolated school systems. In communities throughout the country, issues involving racial isolation in the public schools, symbolized by headlines on "busing" and "neighborhood schools," have been the subject of considerable controversy.

The Commission has sought out the facts in the hope of shedding needed light on the issues. On the basis of its findings, the Commission has made recommendations which may provide a basis for action by government at all levels; action that it hopes will fulfill for all American children—Negro and white alike—the promise of equality of educational opportunity.

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Chapter 1

Racial Isolation: Extent and Context

Education long has been recognized as one of the important ways in which the promise of America—equality of opportunity—can be fulfilled. The public schools traditionally have provided a means by which those newly arrived in the cities—the immigrant, and the impoverished—have been able to join the American mainstream. The hope for public education always has been that it would be a means of assuring equal opportunity and of strengthening and unifying American society.[1]

During the early years of the Republic, Thomas Jefferson said of education's role:

> The object is to bring into action that mass of talents which lies buried in poverty in every county for want of means of development, and thus give activity to a mass of mind, which in proportion to our population, shall be the double or treble of what it is in most countries.[2]

In the middle of the 19th century, Horace Mann defined education as the "great equalizer of the conditions of men—the balance wheel of the social machinery." [3] Today, the role of education in the attainment of equal opportunity is even more critical. The U.S. Supreme Court, in its 1954 decision on school desegregation, said of education:

> Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.[4]

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[1] As a recent report on education put it: "Americans have typically thought of education as a healer of great social divisions. When the need arose to make one nation out of many communities of foreign origin, the people turned to the public schools, and their faith was justified." Educational Policies Commission of the National Education Association and the American Association of School Administrators, *American Education and the Search for Equal Opportunity* 4 (1965).

[2] "Letter from Thomas Jefferson to Mr. Correa, Nov. 25, 1817," in 7 *The Writings of Thomas Jefferson* 94–95 (Washington ed. 1854).

[3] "Twelfth Annual Report of Horace Mann as secretary of the Massachusetts State Board of Education (1848)," in *Documents in American History* 318 (Commager ed. 1958).

[4] *Brown* v. *Board of Education of Topeka*, 347 U.S. 483, 493 (1954).

The *Brown* case—the culmination of a number of Supreme Court decisions concerned with the meaning of equality in public education[5]—held that governmentally enforced school segregation violated the 14th amendment. "Separate educational facilities," the Supreme Court said, "are inherently unequal."[6]

Although the immediate impact of the Court's ruling was upon the Southern and border States that compelled or authorized segregation in the public schools, the decision spurred concern about the extent of school segregation throughout the Nation and the benefits being derived by Negro children from the educational process. This chapter is addressed to some of the basic facts which underlie this concern.

Extent of Racial Isolation in the Public Schools

Twelve years after the Supreme Court's decision, the U.S. Office of Education in its national survey, *Equality of Educational Opportunity*, found that:

> . . . when measured by that yardstick [segregation], American public education remains largely unequal in most regions of the country, including all those where Negroes form any significant proportion of the population.[7]

> . . . the great majority of American children attend schools that are largely segregated—that is, almost all of their fellow students are of the same racial background as they are.[8]

Sixty-five percent of all first grade Negro pupils surveyed attend schools that have an enrollment 90 percent or more Negro, while almost 80 percent of all first grade white students surveyed attend schools that are 90 percent or more white.[9] A substantially greater proportion of Negro students attend schools that are 50 percent or more Negro. Approximately 87 percent of all Negro first graders are in such schools [10]—72 percent in the urban North; 97 percent in the urban South.[11]

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[5] *See e.g., Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938); *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637 (1950).

[6] 347 U.S. at 495.

[7] Coleman et al., *Equality of Educational Opportunity* 3 (1966). The study, which was required in title IV of the Civil Rights Act of 1964, was carried out by the National Center for Educational Statistics of the U.S. Office of Education. Dr. James Coleman of The Johns Hopkins University had major responsibility for the design, administration, and analysis of the study. Hereinafter cited as the *OE Survey*.

[8] *Ibid.*

[9] *Ibid.*

National or regional averages such as these, however, do not reflect the full dimensions of school segregation. The Commission's investigations found that in the Nation's metropolitan areas—where two-thirds of both the Nation's Negro and white populations now live—school segregation is more severe than the national figures suggest. And it is growing.

In 15 large metropolitan areas in 1960, 79 percent of the nonwhite [12] public school enrollment was in central city schools, while 68 percent of the white enrollment was suburban.[13] In Cleveland, 98 percent of the nonwhite metropolitan public school children were in the central city schools in 1960, and 69 percent of the whites were in suburban public schools.[14] The Cleveland city schools were 47 percent nonwhite in 1960. By 1965, they were more than 50 percent nonwhite.[15] In Philadelphia, 77 percent of the nonwhite metropolitan public school children were in the city schools in 1960, and 73 percent of the white children were in suburban public schools.[16] In 1960, the Philadelphia city schools were 48 percent Negro. By 1965, they were almost 60 percent Negro.[17] This pattern of racial concentration is typical of major metropolitan areas.[18]

Racial concentration also is severe within the central cities. Table 1 shows the extent of elementary school segregation in 75 cities.[19] In these cities 75 percent of the Negro students are in elementary schools with enrollments that are nearly all-Negro (90 percent or more Negro), while 83 percent of the white students are in nearly all-white schools. Nearly

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[10] *Ibid.*

[11] *Id.* at 40, table 2.14.1.

[12] Although the Commission's concern in this report is with racial isolation of Negroes, statistical data frequently are available only in terms of "whites" and "nonwhites." As of 1960, Negroes constituted 92 percent of the Nation's nonwhite population. In some cities, such as Los Angeles and San Francisco, where other races represent a substantial proportion of the population, data on nonwhites generally are not necessarily true for Negroes specifically. In instances where data are only available on a white-nonwhite basis, the Commission generally has chosen for examples cities where Negroes represent virtually all of the nonwhite population.

[13] Tables on school enrollment in selected metropolitan areas, prepared for the Commission by Prof. Karl E. Taeuber of the University of Wisconsin. The 15 metropolitan areas are Boston, Atlanta, Philadelphia, Milwaukee, St. Louis, Houston, Cincinnati, Baltimore, Chicago, Birmingham, Pittsburgh, New Orleans, Buffalo, Memphis, San Francisco-Oakland.

[14] Taeuber, *Population Distribution and Residential Segregation in Cleveland*, a special report prepared for the Commission, Table 4 (1966).

[15] Data received from the Cleveland, Ohio public school system.

[16] Taeuber, *op. cit. supra* note 13.

[17] Data received from the Philadelphia, Pa. public school system.

[18] See note 13 *supra*.

[19] For a discussion of the importance of school desegregation at the elementary school level, see chapter III at 106–108.

TABLE 1.—*Extent of elementary school segregation in 75 school systems*

City	Percentage of Negroes in 90 to 100 percent Negro schools	Percentage of Negroes in majority-Negro schools	Percentage of whites in 90 to 100 percent white schools
Mobile, Ala.	99.9	99.9	100.0
Tuscaloosa, Ala.	99.6	99.6	100.0
Little Rock, Ark.	95.6	95.6	97.1
Pine Bluff, Ark.	98.2	98.2	100.0
Los Angeles, Calif.	39.5	87.5	94.7
Oakland, Calif.	48.7	83.2	50.2
Pasadena, Calif.	None	71.4	82.1
Richmond, Calif.	39.2	82.9	90.2
San Diego, Calif.	13.9	73.3	88.7
San Francisco, Calif.	21.1	72.3	65.1
Denver, Colo.	29.4	75.2	95.5
Hartford, Conn.	9.4	73.8	66.2
New Haven, Conn.	36.8	73.4	47.1
Wilmington, Del.	49.7	92.5	27.3
Miami, Fla.	91.4	94.4	95.3
Tallahassee, Fla.	99.7	99.7	100.0
Americus, Ga.	99.3	99.3	100.0
Atlanta, Ga.	97.4	98.8	95.4
Augusta, Ga.	99.2	99.2	100.0
Marietta, Ga.	94.2	94.2	100.0
Chicago, Ill.	89.2	96.9	88.8
East St. Louis, Ill.	80.4	92.4	68.6
Peoria, Ill.	21.0	86.9	89.6
Fort Wayne, Ind.	60.8	82.9	87.7
Gary, Ind.	89.9	94.8	75.9
Indianapolis, Ind.	70.5	84.2	80.7
Wichita, Kans.	63.5	89.1	94.8
Louisville, Ky.	69.5	84.5	61.3
New Orleans, La.	95.9	96.7	83.8
Baltimore, Md.	84.2	92.3	67.0
Boston, Mass.	35.4	79.5	76.5
Springfield, Mass.	15.4	71.9	82.8
Detroit, Mich.	72.3	91.5	65.0
Flint, Mich.	67.9	85.9	80.0
Minneapolis, Minn.	None	39.2	84.9
Hattiesburg, Miss.	98.7	98.7	100.0
Vicksburg, Miss.	97.1	97.1	100.0
Kansas City, Mo.	69.1	85.5	65.2
St. Joseph, Mo.	39.3	39.3	91.3
St. Louis, Mo.	90.9	93.7	66.0
Omaha, Nebr.	47.7	81.1	89.0
Newark, N.J.	51.3	90.3	37.1
Camden, N.J.	37.0	90.4	62.4
Albany, N.Y.	None	74.0	66.5
Buffalo, N.Y.	77.0	88.7	81.1
New York City, N.Y.[10]	20.7	55.5	56.8
Charlotte, N.C.	95.7	95.7	94.7
Raleigh, N.C.	98.5	98.5	100.0
Winston-Salem, N.C.	88.7	95.1	95.6
Cincinnati, Ohio	49.4	88.0	63.3
Cleveland, Ohio	82.3	94.6	80.2
Columbus, Ohio	34.3	80.8	77.0
Oklahoma City, Okla.	90.5	96.8	96.1
Tulsa, Okla.	90.7	98.7	98.8
Portland, Oreg.	46.5	59.2	92.0
Chester, Pa.	77.9	89.1	37.9
Harrisburg, Pa.	54.0	81.3	56.2
Philadelphia, Pa.	72.0	90.2	57.7
Pittsburgh, Pa.	49.5	82.8	62.3

See footnote on p. 5.

TABLE 1.—*Extent of elementary school segregation in 75 school systems*—Continued

City	Percentage of Negroes in 90 to 100 percent Negro schools	Percentage of Negroes in majority-Negro schools	Percentage of whites in 90 to 100 percent white schools
Providence, R.I.	14.6	55.5	63.3
Columbia, S.C.	99.1	99.1	100.0
Florence, S.C.	99.1	99.1	100.0
Sumter, S.C.	99.0	99.0	100.0
Knoxville, Tenn.	79.3	79.3	94.9
Memphis, Tenn.	95.1	98.8	93.6
Nashville, Tenn.	82.2	86.4	90.7
Amarillo, Tex.	89.6	89.6	98.3
Austin, Tex.	86.1	86.1	93.1
Dallas, Tex.	82.6	90.3	90.1
Houston, Tex.	93.0	97.6	97.3
San Antonio, Tex.	65.9	77.2	89.4
Richmond, Va.	98.5	98.5	95.3
Seattle, Wash.	9.9	60.4	89.8
Milwaukee, Wis.	72.4	86.8	86.3
Washington, D.C.	90.4	99.3	34.3

NOTE—Percentages shown in this table are for 1965–66 school year, except for Seattle, Wash. (1964–65), Los Angeles, Calif. (1963–64), and Cleveland, Ohio (1962–63).

9 of every 10 Negro elementary school students attend majority-Negro schools.[21]

The high degree of racial separation in the schools shown by these national figures is found in the North as well as in Southern and border States. In Buffalo, N.Y., for example, 77 percent of the Negro elementary schoolchildren attend schools that are more than 90 percent Negro,

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[20] These percentages make no reference to the large Puerto Rican enrollment in New York City elementary schools. The data provided to the Commission by the New York City public school system are based on classroom counts by teachers. According to Mr. Leonard Moriber, research associate, New York City Board of Education, students with Spanish surnames are counted as Puerto Ricans, regardless of their race. Thus it is likely that the actual number and proportion of Negro elementary school students is somewhat higher than the data show. According to the school system's data, of the total of 592,000 elementary school students in the New York City school system, 183,000 are Negroes and 130,000 are Puerto Ricans. Of the total of 313,000 Negro and Puerto Rican students, 177,000 (56 percent) are in schools whose student bodies are 90–100 percent Negro and Puerto Rican. 267,000 (85 percent) are in schools whose student bodies are majority-Negro and Puerto Rican.

[21] The total elementary school enrollment for these 75 cities is 1.6 million Negro and 2.4 million white. Of the Negro school children, 1.2 million (75 percent) are in 90–100 percent Negro schools and 1.4 million (88 percent) are in majority-Negro schools. Of the white school children, 2.0 million (83 percent) are in 90–100 percent white schools. See Appendix A, Table 1, for a complete description of the racial composition of each school system. (All appendices except the legal appendix are published in volume 2 of this report.) In describing the extent of segregation the Commission has used three basic terms throughout this report. The term "nearly all-Negro" means 90.5–100 percent Negro. "Majority-Negro" means 50.5–100 percent Negro. The term "nearly all-white" means 0–10.5 percent Negro.

while 81 percent of the whites are in nearly all-white schools (90 percent or more white).[22] In Gary, Ind., the figures are 90 percent and 76 percent, respectively.[23] Again, in the North, the proportion of Negro children in majority-Negro schools often equals or exceeds the national average. In Flint, Mich., 86 percent of the Negro elementary schoolchildren are in majority-Negro schools; [24] in Milwaukee, 87 percent; [25] in Chicago, 97 percent.[26]

A high degree of racial separation of Negro students frequently prevails regardless of the size of the school system. Examples from Northern and border State school systems are illustrative.[27] Kansas City, Mo., has an elementary school enrollment twice as large as Fort Wayne, Ind., yet in each city more than 60 percent of the Negro children are in nearly all-Negro schools.[28] Detroit, Mich., has an elementary school enrollment almost four times as large as Newark, N.J., yet in each city more than 90 percent of the Negro children are in majority-Negro schools.[29]

Nor does the pattern necessarily vary according to the proportion of Negroes enrolled in the school system. For example, Negroes are 26 percent of the elementary school enrollment in Milwaukee, Wis., and almost 60 percent of the enrollment in Philadelphia, Pa., yet in both cities almost three of every four Negro children attend nearly all-Negro schools.[30] Negroes are only 19 percent of the elementary school enrollment in Omaha, Nebr., and almost 70 percent of the enrollment in Chester, Pa., yet in both cities at least 80 percent of the Negro children are enrolled in majority-Negro schools.[31]

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[22] Data received from the Buffalo, N.Y. public school system.

[23] Data received from the Gary, Ind. public school system. In Detroit, Mich., 72 percent of the Negro elementary school students are in 90 percent or more Negro schools, while 65 percent of the whites are in nearly all-white schools. In Cleveland, Ohio, the figures are 82 percent and 80 percent respectively. (Data from Detroit and Cleveland public school systems).

[24] Data received from Flint, Mich. public school system.

[25] Data received from the Milwaukee, Wis. public school system.

[26] Data received from the U.S. Office of Education.

[27] A number of border State school systems, such as Baltimore, Md., Washington, D.C., St. Louis and Kansas City, Mo., Wichita, Kans., and Wilmington, Del., maintained school segregation by law until the *Brown* decision in 1954. These border State school systems abandoned legally compelled school segregation shortly after the *Brown* decision. See Southern School News, Oct. 1, 1954, pp. 4, 5, 8, 10.

[28] Data received from the Kansas City, Mo., and Fort Wayne, Ind. public school systems. Compare East St. Louis, Ill. (total elementary enrollment, 15,000), with Baltimore, Md. (total elementary enrollment, 119,000), where more than 80 percent of the Negro elementary school children in both cities are in nearly all-Negro schools. Compare also Gary, Ind. (total elementary enrollment, 28,000), with St. Louis, Mo. (total elementary enrollment, 90,000), where 90 percent or more of the Negro elementary school children in both cities are in nearly all-Negro schools.

[29] Data received from Detroit, Mich., and Newark, N.J. public school systems. Compare Springfield, Mass. (total elementary enrollment, 19,000), with San Diego, Calif. (total elementary enrollment, 70,000), where more than 70 percent of the Negro elementary school children in both cities are in majority-Negro schools. Compare also Wilmington, Del. (total elementary enrollment, 8,000), with Philadelphia, Pa. (total elementary enrollment, 156,000), where more than 90 percent of the Negro elementary school children in both cities are in majority-Negro schools.

Although levels of segregation are discernibly higher in the South than in the North, the two regions do not fall into discrete categories. Table 2 shows the extent of Negro elementary school segregation in 20 Southern and Northern cities. The extent of racial isolation in Northern school systems does not differ markedly from that in the South.

TABLE 2.—*Extent of elementary school segregation in 20 selected Northern and Southern cities—based on proportion of Negro students in 90–100 percent Negro and majority-Negro elementary schools*

Southern cities	Percent in 90-100% Negro schools	Percent in majority-Negro schools	Northern cities	Percent in 90-100% Negro schools	Percent in majority-Negro schools
Richmond, Va.	99	99	Gary, Ind.	90	95
Atlanta, Ga.	97	99	Chicago, Ill.	89	97
Little Rock, Ark.	96	96	Cleveland, Ohio	82	95
Memphis, Tenn.	95	99	Chester, Pa.	78	89
Marietta, Ga.	94	94	Buffalo, N.Y.	77	89
Houston, Tex.	93	98	Detroit, Mich.	72	92
Miami, Fla.	91	94	Milwaukee, Wis.	72	87
Winston-Salem, N.C.	89	95	Indianapolis, Ind.	71	84
Dallas, Tex.	83	90	Flint, Mich.	68	86
Nashville, Tenn.	82	86	Newark, N.J.	51	90

Racial isolation in the schools, then, is intense whether the cities are large or small, whether the proportion of Negro enrollment is large or small, whether they are located North or South.[32]

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[30] Data received from the Milwaukee, Wis., and Philadelphia, Pa., public school systems. Compare Wichita, Kans. (13 percent Negro elementary enrollment), with Detroit, Mich. (55 percent Negro elementary enrollment), where more than 60 percent of the Negro children in both cities attend 90–100 percent Negro schools. Compare also Fort Wayne, Ind. (14 percent Negro elementary enrollment), with Newark, N.J. (69 percent Negro elementary enrollment), where more than 50 percent of the Negro children in both cities attend 90–100 percent Negro schools.

[31] Data received from the Omaha, Nebr., and Chester, Pa., public school systems. Compare Richmond, Calif. (22 percent Negro elementary enrollment), with Pittsburgh, Pa. (39 percent Negro elementary enrollment), where more than 80 percent of the Negro children in both cities attend majority-Negro schools. Compare also Denver, Colo. (14 percent Negro elementary enrollment), with New Haven, Conn. (46 percent Negro elementary enrollment), where at least 73 percent of the Negro children in both cities attend majority-Negro schools.

[32] A similar racial pattern exists for teachers. In Chester, Pa., 101 of the 112 Negro elementary school teachers in the school system in 1965 taught in schools that were 90 to 100 percent Negro. In Buffalo, N.Y., of the total of some 200 Negro elementary school teachers, 80 percent taught in 90 to 100 percent Negro schools in 1965. In Indianapolis, Philadelphia, and Chicago, more than 90 percent of the Negro elementary school teachers taught in majority-Negro schools in 1965. In border State school systems, an even greater proportion of Negro teachers are found in nearly all-Negro schools. In Baltimore, for example, more than 85 percent of the more than 2,000 Negro elementary school teachers taught in schools that were 90 to 100 percent

Footnote continued on following page.

Growth of Racial Isolation in the Schools

Over the past 15 years, Negro elementary school enrollment in most city school systems has risen. There also has been an increase in the number of Negro elementary students in majority-Negro and nearly all-Negro schools.

Northern School Systems

Table 3 shows the change during recent years in the number and proportion of Negro elementary children attending such schools in 15 Northern cities.[33]

Eighty-four percent of the total Negro increase in these 15 city school systems was absorbed in schools that are now 90–100 percent Negro, and 97 percent in schools more than 50 percent Negro.[34] In Cincinnati, Ohio, the Negro elementary school enrollment doubled over the last 15 years, but the number of Negro children in majority-Negro schools almost tripled. In 1950, 7 of every 10 Negro elementary schoolchildren in Cincinnati attended majority-Negro schools. In 1965, nearly 9 of 10 did.[35] In Oakland, Calif., almost half of the Negro elementary school children were in 90–100 percent Negro schools in 1965. Five years earlier, less than 10 percent were. During the 5-year period, Negro elementary school enrollment increased by 4,100, but the number of Negro students in 90–100 percent Negro schools increased by almost 8,000.[36]

The growing segregation of Negro elementary school students in Northern school systems has resulted in substantial changes in the racial composition of individual schools. For example, the Moses Cleveland Elementary School in Cleveland, Ohio, was 96 percent white in 1933. Over the next 25 years, Negro enrollment at the school increased slowly at a rate averaging less than 2 percent per year. In 1958, the Moses

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Negro in 1965. In St. Louis, all but 73 of the nearly 1,500 Negro elementary school teachers taught in 90 to 100 percent Negro schools in 1965. (Data received from the respective school systems.) In Southern school systems, segregation of teachers by race is virtually absolute. In Southern metropolitan areas the average Negro elementary school student attends a school in which 96 percent of the teachers are Negroes, and the average white student attends a school in which 96 percent of the teachers are white. See *OE Survey* at 126. For a complete description of the racial composition of the teaching staffs of elementary school systems, see App. A, Table II.

[33] See App. A, Table III, for complete data on the growth of school segregation in individual Northern city school systems.

[34] The total increase in Negro enrollment was 154,000 of which 130,000 (84 percent), were absorbed in 90 to 100 percent Negro schools, and 149,000 (97 percent), were absorbed in majority-Negro schools.

[35] Data received from the Cincinnati, Ohio, public school system.

[36] Data received from the Oakland, Calif., public school system.

Table 3.—*Change in number and proportion of Negro elementary enrollment in 90–100 percent Negro and majority-Negro schools in Northern school systems*

City	Year	Number in 90-100% Negro schools	Percentage of total Negro enrollment	Number in majority-Negro schools	Percentage of total Negro enrollment	Year	Number in 90-100% Negro schools	Percentage of total Negro enrollment	Number in majority-Negro schools	Percentage of total Negro enrollment
Cincinnati	1950	3, 981	43. 7	6, 442	70. 7	1965	11, 155	49. 4	19, 868	88. 0
Milwaukee	1950*	1, 316	51. 2	1, 716	66. 8	1965	14, 344	72. 4	17, 204	86. 8
Pasadena	1950	0	0. 0	196	26. 2	1965	0	0. 0	3, 240	71. 4
Philadelphia	1950	29, 555	63. 2	39, 633	84. 8	1965	66, 052	72. 0	82, 704	90. 2
Pittsburgh	1950	3, 226	30. 4	5, 408	51. 0	1965	9, 226	49. 5	15, 428	82. 8
Indianapolis	1951	7, 637	83. 2	8, 101	88. 2	1965	15, 426	70. 5	18, 423	84. 2
Cleveland	1952	12, 369	57. 4	18, 174	84. 4	1962	41, 034	82. 3	47, 160	94. 6
Oakland	1959*	1, 110	7. 7	10, 274	71. 1	1965	9, 043	48. 7	15, 455	83. 2
Detroit	1960	62, 391	66. 9	84, 939	91. 1	1965	77, 654	72. 3	98, 274	91. 5
Buffalo	1961	9, 199	80. 5	10, 212	89. 4	1965	13, 106	77. 0	15, 097	88. 7
San Francisco	1962	1, 579	11. 6	10, 334	75. 8	1965	3, 031	21. 1	10, 369	72. 3
Chester	1963	2, 961	71. 1	3, 573	85. 8	1965	3, 499	77. 9	4, 001	89. 1
Harrisburg	1963	2, 103	58. 1	2, 994	82. 7	1965	2, 025	54. 0	3, 048	81. 3
Springfield, Mass	1963	0	0. 0	1, 989	58. 8	1965	567	15. 4	2, 651	71. 9
New Haven	1963	1, 196	22. 5	3, 769	71. 0	1965	2, 171	36. 8	4, 329	73. 4

*Estimated figures based on census and school enrollment data.

Cleveland School was 47 percent Negro. During the next few years, the rate of increasing Negro enrollment accelerated substantially. By 1964, the school was 95 percent Negro.[37] The Washington Elementary School in Pasadena, Calif., was 11 percent Negro in 1946. During the next 12 years, the proportion of Negro enrollment slowly increased to 52 percent in 1958. Three years later, the Negro enrollment was 69 percent. By 1964, the school's enrollment was 82 percent Negro.[38] Thus, in several cases studied, once the school became almost half or majority-Negro, it rapidly became nearly all-Negro.

Southern and Border State School Systems

The story is somewhat different in Southern and border States. There, the proportion of Negroes in totally Negro schools has decreased since the 1954 Supreme Court decision, but the number of Negro children attending all-Negro or nearly all-Negro schools has risen sharply.

In St. Louis, Mo., which maintained *de jure* segregated public schools before the *Brown* decision, there were 27,000 Negro elementary students in segregated schools in 1954. By 1965, there were 52,000 Negro students in schools 90 to 100 percent Negro.[39] In Houston, Tex., where public schools were completely segregated until 1960, the number of Negro children in all-Negro elementary schools increased by 20 percent from 1960 to 1965.[40] The rising Negro school enrollment, combined with only slight desegregation, has produced a substantial increase in the number of Negroes attending all-Negro or nearly all-Negro schools in Southern and border State cities.

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[37] Also in Cleveland, in the Columbia Elementary School, Negro enrollment increased from 2 percent in 1931 to 43 percent in 1945. By 1947, the Columbia school was 64 percent Negro. By 1958, it was 99 percent Negro. Data received from the Cleveland, Ohio public school system.

[38] Data received from the Pasadena, Calif., public school system. In Omaha, Nebr., the Druid Hill Elementary School was only 5 percent Negro in 1950. Over the next 10 years Negro enrollment increased at a rate of 3.5 percent per year to 40 percent. Between 1960 and 1965, Druid Hill's Negro enrollment jumped to 94 percent. In Cincinnati, Ohio, Negro enrollment at the Evanston Elementary School increased from 1 percent in 1950 to 50 percent in 1956. Two years later, the school was more than 90 percent Negro. In Indianapolis, Ind., Negro enrollment at Elementary School No. 60 gradually increased from 2 percent in 1951 to 44 percent in 1960. By 1963, Negro enrollment had reached 65 percent. Two years later, the school was more than 90 percent Negro. (Data received from the respective public school systems.)

[39] Data received from the St. Louis, Mo. public school system.

[40] Data received from the Houston, Tex., public school system. See App. A, Table III, for data on the growth of school segregation in individual Southern and border State school systems.

Racial Isolation and Population Trends

Metropolitan Areas

The increasing separation of Negro and white school children in metropolitan areas, and the concentration of Negro children within central city schools, have occurred in the context of similar trends in the general population. Since the turn of the century, America has become an urban Nation. The change from rural to urban residence, although somewhat more dramatic for Negro Americans than for whites, has been a national phenomenon. In 1960, approximately two-thirds of all Americans—white and Negro—lived in metropolitan areas.[40]

Although white and Negro Americans now reside in metropolitan areas in similar proportions, there has been a change in their pattern of residence within those areas. Sixty-six years ago, little more than half the Negroes in metropolitan areas lived in the central city. By 1960, however, 8 of every 10 Negroes in metropolitan areas resided there. White population trends have not been similar. In 1900, more than 6 of every 10 metropolitan whites lived in the central cities, but by 1960 more than half the metropolitan white population resided in the suburbs.

An examination of recent population increases shows the trend clearly. Between 1940 and 1960 the total population of metropolitan areas increased by 40 million persons. Eighty-four percent of the Negro increase occurred in the central cities and 80 percent of the white increase in the suburbs. Between 1950 and 1960 the suburbanization of whites accelerated; nearly 90 percent of their metropolitan increase occurred in the suburbs.

In the 24 largest metropolitan areas—areas containing more than half the total United States urban population in 1960[41]—an even sharper contrast appears. In the two decades between 1940 and 1960, almost 100 percent of the white increase was absorbed in the suburbs. Between 1950 and 1960, the 24 central cities lost nearly 1½ million white residents, and gained more than 2 million Negroes. In the Baltimore metropolitan area, for example, the white surburban population increased by 324,000, while the central city lost 113,000 white persons. One hundred thousand of the area's nonwhite population increase of 107,000 was in the central city.[43] Similarly, Cleveland's suburbs gained 367,000 whites, while the central city lost 142,000. One hundred and three thousand of the 105,000 Negro population increase was in the central city. There were only 6,000 Negroes throughout the Cleveland suburbs in 1960.[44]

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[40] All demographic data which follow in this chapter, unless indicated otherwise, are derived from the U.S. Bureau of the Census, *Census of Population, 1960. Standard Metropolitan Statistical Areas*, PC (3)–1D, table I.

[41] Twenty-four metropolitan areas contained 1 million persons or more in 1960, while there were 188 metropolitan areas which contained less than 1 million persons in 1960. See Bureau of the Budget, *Office of Statistical Standards: Standard Metropolitan Statistical Areas* (1964).

School-age children [45] in metropolitan areas also reflect these trends. Between 1950 and 1960, the school-age population of the Nation's 24 largest metropolitan areas—which today contain almost two-thirds of the Nation's urban school-age population—increased by 5 million. Almost 90 percent of the nonwhite increase occurred in the central cities; more than 80 percent of the white increase was in the suburbs.[46] By 1960, four out of five nonwhite metropolitan children of school age lived in central cities, while nearly three-fifths of the white children lived in the suburbs.[47]

Thus the growth of the Nation's metropolitan areas has been characterized by an increasing separation of the white and Negro populations. A recent study of the U.S. Census reports no change in these trends.[48]

Central Cities

Not only are Negroes concentrated in central cities, but they are segregated within them. A recent study of residential patterns in 207 central cities shows that residential segregation is rigid and uniform.[49] Intense residential segregation exists in virtually every city in the Nation:

> This is true for all cities in all regions of the country and for all types of cities. . . . It is true whether there are hundreds of thousands of Negro residents, or only a few thousand.[50]

One index of residential segregation is the proportion of Negroes who would have to move from predominantly Negro blocks to predominantly white blocks in order to achieve an even distribution of the population. As of 1960, the index of residential segregation for the 207 cities was 86 percent.[51] In Pontiac, Mich., it was 90 percent; [52] in Charlotte, N.C., 94 percent; [53] in Bakersfield, Calif., 87 percent.[54]

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[43] Tables on population changes in the Baltimore metropolitan area prepared for the Commission by Prof. Karl E. Taeuber of the University of Wisconsin.

[44] Taeuber, *op. cit. supra* note 14, table 1.

[45] The school-age population statistics that follow include ages 5 through 19.

[46] Data for 1960 from U.S. Bureau of the Census, *Census of Population and Housing* PHC (1), table P2 (1960); data for 1950 from U.S. Bureau of the Census, *Characteristics of Population*, vol. 2, table 33; vol. 3, table 2 (1950).

[47] *Ibid.*

[48] U.S. Bureau of the Census, *Current Population Reports*, P-20, 151–152 (1965).

[49] Taeuber and Taeuber, *Negroes in Cities* 28–68 (1965).

[50] *Id.* at 35.

[51] *Id.* at 36.

[52] *Id.* at 33.

[53] *Id.* at 32.

[54] *Ibid.*

Thus there is a parallel between population and school enrollment trends within metropolitan areas. In both cases, Negro population increases are almost entirely absorbed in the central cities. In both cases, the isolation of Negroes in residential ghettos and Negro schools is growing. The Nation's Capital—Washington, D.C.—already has a majority-Negro population. Other cities are experiencing rapid increases in Negro population.[55] City school enrollments more sharply reflect the trend. A substantial number of cities have elementary school enrollments that already are more than half Negro. In these cities, at least, the problems of racial isolation in the schools can no longer fully be met in the context of the city alone.[56]

Educational Disparities

During the period in which racial isolation in the schools has grown rapidly, serious disparities in educational attainment between Negro and white students have persisted. The measure of educational attainment most commonly used in recent decades has been years of school completed.[57] Assessments based on this standard suggest that the gap between the educational achievement of Negro and white Americans has been narrowed substantially. Between 1940 and 1962, for example, the difference in years of school completed between whites and nonwhites was reduced by more than half.[58] In evaluating this apparent progress, however, an additional factor must be taken into account.

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[55] See Douglas, "The Urban Negro Family," in *The American Negro Reference Book*, 338 (Davis ed. 1966).

[56] There were 24 metropolitan areas that had more than 1 million inhabitants each in 1960. Of the 24 areas, 20 had single central cities. Of these 20 areas, 9 had majority-Negro elementary school enrollment in 1965: Atlanta (54 percent), Baltimore (64 percent), Chicago (53 percent), Cleveland (54 percent), Detroit (55 percent), Newark (69 percent), Philadelphia (59 percent), St. Louis (63 percent), Washington, D.C. (91 percent). Two cities had elementary enrollments that were 40 to 50 percent Negro: Cincinnati (40 percent), Kansas City, Mo. (42 percent). Four cities had elementary enrollments that were 30 to 40 percent Negro: Buffalo (35 percent), Houston (34 percent), New York City (31 percent), Pittsburgh (39 percent). (Data received from the respective school systems.)

[57] This measure has been used by the U.S. Census since 1940. For the definition, see U.S. Bureau of the Census, *Census of Population, The United States Summary*, PC (1) 1C xxi (1960).

[58] In 1940, nonwhite males 25 to 29 years old averaged 6.5 years of school, while white males of similar age averaged 10.5 years of school. By 1962, nonwhite males in the same age bracket averaged 11 years of school while white males averaged 12.5 years of school. The data for females 25 to 29 years of age reveal the same narrowing of the gap. In 1940, nonwhite females in this age bracket had had an average of 7.5 years of school; while white females had had 10.9 years of school. But by 1962, nonwhite women averaged 11.4 years of schooling, while white women averaged 12.4 years of school. Data for 1962 from U.S. Bureau of the Census, *Educational Attainment: March, 1962, Current Population Reports*, P-20 No. 121, tables 2 and 3; 1940 data from U.S. Department of Labor, *The Economic Situation of Negroes in the United States*, Bull. No. S-3 (1962).

Years of school completed do not accurately reflect variations in educational attainment. The U.S. Office of Education, in its *Equality of Educational Opportunity* survey, made a systematic analysis of verbal ability and reading achievement tests, which provide better indicators of educational attainment. Although these achievement tests do not measure innate ability and are not free of cultural bias, they are a useful indicator:

> What they measure are the skills which are among the most important in our society for getting a good job and moving up to a better one, and for full participation in an increasingly technical world.[59]

The survey found that the relative academic standing of students changes during their school careers.[60] According to the survey, Negro and white students in metropolitan areas begin school with a noticeable difference in verbal ability.[61] At sixth grade, the average Negro student is about one and one-half grade levels behind the average white student in verbal achievement. By the time 12th grade is reached, the average white student performs at or slightly below the 12th-grade level, but the average Negro student performs below the 9th-grade level.[62] Thus years of school completed has an entirely different meaning for Negroes and whites.

Other Disparities

The persistence of disparities in educational attainment has been accompanied by continuing and even widening social and economic disparities between Negro and white Americans.

True, there has been improvement in absolute terms in the position of Negroes. Levels of income are substantially higher now than before. More Negroes are attending college and entering professions; more skilled jobs are being filled by Negroes than ever before.[63]

Despite this improvement, however, when the social and economic gains of Negroes are measured against the gains of white Americans, the gap is as wide as ever. The income of Negroes has risen over the years, but their situation relative to white Americans has worsened. In the 15-year period between 1949 and 1964, the median annual income for nonwhite families increased from $1,650 to $3,800. Median annual income for white families rose during the same period from $3,200 to more than $6,800.[64] The disparity between white and nonwhite annual income in 1949 had been less than $1,600. By 1964, the gap was more than $3,000.

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[59] *OE Survey* 20.

[60] *Id.* 273–275.

[61] *Id.* at 221, figure 3.11.1. The survey does not express this first-grade difference in terms of precise grade levels but rather in terms of test score distributions.

[62] *Id.* 273–274.

[63] U.S. Department of Labor, *The Negro in the United States: Their Economic and Social Situation*, Bull. No. 1511, table IVB–2, table IIB–2; for income levels see Brimmer, "The Negro in the National Economy," in Davis, *op. cit. supra* note 55, at 259.

The distribution of occupations for Negroes and whites reveals much the same situation. The proportion of the total Negro labor force in white-collar occupations increased by one-third—to 11 percent—between 1950 and 1960. For whites, however, 33 percent were in white-collar jobs in 1950, three times the percentage attained by Negroes 10 years later.[65]

Within the Negro population, there also is a growing gap separating the poor from the relatively affluent. For a comparatively small percentage of the urban Negro population, the decade of the 1950s brought real economic progress and even relative affluence.[66] For the great majority of Negro Americans, however, there was little economic change in relation either to whites or to more affluent Negroes.

The great majority of Negroes still are "have-not" Americans. Small advances in their overall economic and social position have not altered significantly their situation relative to whites. The closer the promise of equality seems to come, the further it slips away. In every American city today, most Negroes inhabit a world largely isolated from the affluence and mobility of mainstream America.

* * *

These facts provide the foundation for the Commission's study. They raise basic questions, and it is to these questions that the remainder of this report is addressed.

First, what are the factors which cause, or tend to reinforce, separation of Negroes and whites in the schools? How is this separation related to the demographic trends described in this chapter, and to other factors—educational, fiscal, and governmental?

Second, what are the consequences of racial isolation in the public schools? What impact does it have upon the educational, economic, and social achievement of Negroes, and on the attitudes of Negro and white Americans?

Third, how effective are existing programs designed to eliminate racial isolation in the schools, and to remedy existing educational disadvantage?

Fourth, what is the current and potential role of State and Federal governments, and what are the legal issues arising from the existence of racially isolated schools?

Based on the specific findings in answer to these questions, recommendations have been set forth that provide a basis for positive action at all levels of government.

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[64] Brimmer, *op. cit. supra* note 63, at 259, table II; U.S. Bureau of the Census, *Current Population Reports*, Ser. P-60, No. 47, table E (1965).

[65] U.S. Department of Labor, *op. cit. supra* note 63, at 112.

[66] By 1960, the annual mean family income of the top 20 percent of nonwhite families was nearly $9,000. The top 5 percent earned more than $12,600 per year. Brimmer, *op. cit. supra* note 63, at 271.

Chapter 2

Causes of Racial Isolation

The causes of racial isolation in the schools are complex. It has its roots in racial discrimination that has been sanctioned and even encouraged by government at all levels. It is perpetuated by the effects of past segregation and racial isolation. It is reinforced by demographic, fiscal, and educational changes taking place in the Nation's metropolitan areas. And it has been compounded by the policies and practices of urban school systems.

Metropolitan Dimensions

The rich variety of the Nation's urban population is being separated into distinct groups, living increasingly in isolation from each other. In metropolitan areas there is a growing separation between the poor and the affluent, between the well educated and the poorly educated, between Negroes and whites. The racial, economic, and social stratification of cities and suburbs is reflected in similar stratification in city and suburban school districts.

School District Organization

Just as metropolitan areas typically are divided into large numbers of independent municipalities, so metropolitan schoolchildren typically are served by many separate school districts.[1] It is not uncommon for a single metropolitan area to contain 40 or more school districts. In the Boston Metropolitan Area, for example, there are more than 75 separate school districts. The Detroit area has 96 separate school districts.[2] Moreover, school districts in metropolitan areas serve widely varying numbers of students. In 1962, more than half of the Nation's metropolitan schoolchildren were served by only 5 percent of the school districts in metropolitan areas, while 3 percent of metropolitan schoolchildren were served by 35 percent of the school districts.[3]

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[1] The 212 metropolitan areas in the Nation are served by 6,604 school districts. U.S. Bureau of the Census, *Census of Governments 1962*, Vol. 5, at 5 (1964).

[2] *Id.* at 70, 68.

The organization of school districts would not be of special significance if the racial and socioeconomic groups they served were fairly representative of the entire metropolitan area. But city and suburban school districts generally serve separate economic, social, and racial groups.

The Population Trend

As was noted in Chapter 1, two-thirds of all Americans—white and Negro—live in metropolitan areas, but whites and Negroes increasingly live apart. By 1960, more than eight of every 10 Negroes in metropolitan areas resided in central cities, while a majority of the white population was suburban. Current trends suggest that the separation will continue. While Negroes of all age groups are concentrated in cities, white adults are divided equally between cities and suburbs. White school-age children, however, are more heavily concentrated in suburbs. Table 1 shows the change in the age structure of suburban and city whites for 42 metropolitan areas between 1950 and 1960. In 1960 the suburbs contained a lower proportion of whites over 60 years of age than the cities; a greater proportion of whites of childbearing age

TABLE 1.—*Percent of metropolitan white population, in central city and suburbs, by age, 1950 and 1960*

	Percent of white population living in—				Net change 1950 to 1960	
	1950		1960			
	Central city	Suburbs	Central city	Suburbs	Central city	Suburbs
23 largest metropolitan areas—Age groups:						
0–19	54.0	46.0	42.6	57.6	+17.0	+86.4
20–40	57.3	42.7	44.9	55.1	−24.6	+24.2
41–60	56.4	43.6	48.7	51.3	−6.4	+27.2
61 and over	57.0	43.0	55.6	44.4	+22.3	+29.8
Total	56.1	43.9	46.4	53.6	−2.2	+44.2
19 smaller metropolitan areas—Age groups:						
0–19	65.0	35.0	47.0	53.0	−11.8	+84.2
20–40	52.3	47.7	50.0	50.0	−6.0	+3.0
41–60	58.4	41.6	51.9	48.1	+2.7	+34.0
61 and over	59.1	40.9	56.8	43.2	+28.3	+41.2
Total	58.9	41.1	50.2	49.8	−2.3	+38.7

Source: Data compiled from U.S. Bureau of the Census, *1950 Census of Population* and *1960 Census of Population*.

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[3] *Id.* at 24, table 2.

than the cities; and an even greater proportion of white school-age children. Since 1950 the population gain for suburban whites has been highest for children of school age. The cities' losses have been least in the over-60 age group. The trend is most pronounced in the larger metropolitan areas.

The separation of Negro and white adults of childbearing age perpetuates the present concentration of white school-age children in the suburbs and Negro children in the cities. The more isolated pattern for children—the parents of the next generation—suggests that were all migration to cease today, natural population increases alone would greatly intensify racial separation over the next generation.[4]

Social and Economic Trends

The increasing racial contrast between city and suburbs is paralleled by contrasts in economic and social status. Table 2 shows the marked disparities in personal income and educational attainment between suburbs and central cities. On the average, nearly 70 percent of the cities had suburbs with higher median family income and educational attainment in 1960. In the larger metropolitan areas—those with a population of 500,000 or more—this was true of all cities.

TABLE 2.—*City-suburban differentials in socioeconomic status, by population size of urbanized area*

Population of urbanized areas	Number of areas	Percent of urbanized areas with—		
		Higher suburban median family income	Higher suburban percent completing high school	Higher suburban percent in white-collar occupation
1,000,000+	16	100.0	100.0	87.5
500,000–1,000,000	22	100.0	100.0	86.4
250,000–500,000	29	79.9	75.9	55.2
150,000–250,000	43	72.1	62.8	48.8
100,000–150,000	37	70.3	64.9	40.5
50,000–100,000	53	56.6	49.1	30.2
Total areas	200	74.0	68.5	50.5

Source: Schnore, *The Urban Scene*, 207, Table I (1965).

The contrast sharpens when wealth and poverty in absolute terms are considered. Central cities have more poverty—families with incomes below $3,000 a year—than suburbs. Suburbs have more wealth—families with incomes of more than $10,000 a year—than cities. There is also a sharp contrast in educational attainment. For every 25 persons in the suburbs with less than a high school education, there are 30 in the cities; and for every 25 persons in the cities with a college education, there are 30 in the suburbs.[5]

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[4] Farley and Taeuber, *Changes in Metropolitan Areas Color Composition and Residential Segregation Since 1960* (unpublished study in Commission files), (1966).

[5] Data for the 23 largest metropolitan areas, compiled from U.S. Bureau of the Census, *1960 Census of Population*, PC (3), Vol. 3.

Since 1950, cities have declined in social and economic levels compared to suburbs. As Table 3 shows, the suburbs gained almost twice as many persons of high income as the cities. The entire gain in white-collar workers was suburban, with no increase at all in the cities. In addition, the suburbs have gained almost five times as many persons with some college education as the cities.

Almost all the affluent and well-educated people who are settling in the suburbs are white.[6] As a result, suburban school districts acquire increasing numbers of white children from well-educated and relatively affluent families. Left behind in the city school districts are children—many of whom are Negroes—from families of relatively low income and educational attainment.

TABLE 3.—*1950 to 1960 changes in social and economic status of population in the 23 largest metropolitan areas*

1950-60 changes in—	Central city	Percent	Suburbs	Percent
	Number (in thousands)		Number (in thousands)	
Number families with more than $10,000 yearly income	+1, 092	+322	+1, 737	+762
Number individuals over 25 years of age with 1 year or more of college	+360	+14	+1, 709	+84
Number white-collar workers	−2	−. 05	+1, 735	+47

Source: Data compiled from U.S. Bureau of the Census, *1950 Census of Population* and *1960 Census o Population*, vol. 3.

Housing

In large part, the separation of racial and economic groups between cities and suburbs is attributable to housing policies and practices. The practices of private industry—builders, lenders, and real estate brokers—often have been key factors in excluding the poor and the nonwhite from the suburbs and confining them to central cities. Practices of the private housing industry have been rigidly discriminatory,[7] and the housing it has produced—largely in the suburbs—has been at a price that only the relatively affluent can afford.[8]

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[6] In 1960, of the 54 million people living in the metropolitan areas outside of the central cities, only 2½ million were Negroes. U.S. Bureau of the Census, *U.S. Census of Population 1960,* PC (3)–1D, table 1, at 2 (1963).

[7] In 1958 the Commission on Race and Housing concluded that, "It is the real estate brokers, builders, and mortgage finance institutions which translate prejudice into discriminatory action." Commission on Race and Housing, *Where Shall We Live?* 27 (1958). See also Abrams, *Forbidden Neighbors* (1955); McEntire, *Residence and Race* (1960); 1961 U.S. Commission on Civil Rights Report, *Housing* 2–3 (hereinafter cited as *1961 Commission Housing Report*); Denton, *Race and Property* (1964).

[8] At the end of 1965 the median sales price of private nonfarm one-family homes sold throughout the Nation was $20,000. U.S. Department of Housing and Urban Development, *XIX Housing Statistics,* table A–22 (1966).

Private industry is not alone responsible, however, for the growth of virtually all-white, middle-class suburbs surrounding the urban poor. Government at all levels has contributed to the pattern. Racial zoning ordinances imposed by local law were a formidable factor in creating and maintaining racially exclusive neighborhoods. Although such ordinances were held unconstitutional in 1917,[9] a few communities continued to enforce them, even as late as the 1950's.[10] Judicial enforcement of racially restrictive covenants has been another important factor. Although these covenants were private agreements to exclude members of designated minority groups, the fact that they were enforceable by State and Federal courts gave them maximum effectiveness.[11] Not until 1948 was the judicial enforcement of such covenants held unconstitutional,[12] and not until 1953 was their enforcement by way of money damages held unlawful.[13] Although racially restrictive covenants no longer are judicially enforceable, they are still used and the patterns they helped to create still persist.[14]

In addition, the authority of local government to decide on building permits, building inspection standards, and the location of sewer and water facilities, has sometimes been used to discourage private builders who otherwise would be willing to provide housing on a nondiscriminatory basis.[15] The power of eminent domain also has been used to keep

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[9] *Buchanan* v. *Warley,* 245 U.S. 60 (1917).

[10] See, *e.g., City of Birmingham* v. *Monk,* 185 F. 2d 859 (5th Cir. 1950) *cert. denied,* 341 U.S. 940 (1951), where a racial zoning ordinance enacted by the city of Birmingham, Ala., was tested in the courts as late as 1951. It was found to be unconstitutional. See also *Jimerson* v. *City of Bessemer,* Civil No. 10054, N.D. Ala., Aug. 3, 1962, where a Federal District Court noted in the summer of 1962 that the city of Bessemer, Ala., had repealed its racial zoning ordinance "several years ago."

[11] Typically racially restrictive covenants represent agreements among adjoining landowners designating those who will be permitted to occupy the land in the future. Thus, while their effect is similar to that of racial zoning ordinances, their form is that of private agreement rather than legislative fiat. A typical racially restrictive covenant provided: "No part of the land hereby conveyed shall ever be used, or occupied by or sold, demised, transferred, conveyed unto, or in trust for, leased, or rented or given to Negroes, or any other person or persons of Negro blood or extraction, or to any person of the Semitic race, blood, or origin, which racial description shall be deemed to include Armenians, Jews, Hebrews, Persians and Syrians." *Hearings before the U.S. Commission on Civil Rights on Housing in Washington, D. C.,* 58 (1962). See Legal Appendix *infra* at 256 for a partial list of cases in which such covenants were judcially enforced. See also *Corrigan* v. *Buckley,* 271 U.S. 323 (1926), where the U.S. Supreme Court held that these covenants were not invalid in the District of Columbia, a Federal jurisdiction.

[12] *Shelley* v. *Kraemer,* 334 U.S. 1 (1948); *Hurd* v. *Hodge,* 334 U.S. 24 (1948).

[13] *Barrows* v. *Jackson,* 346 U.S. 249 (1953).

[14] This Commission pointed out in 1962: "Restrictive covenants although judicially unenforceable, are still used and recorded in the Washington area, and are often effective in barring members of the proscribed racial and religious groups from occupying homes of their choice and within their means." U.S. Commission on Civil Rights, *Civil Rights U.S.A.: Housing in Washington, D.C.,* 33 (1962).

[15] See McEntire, *op. cit. supra,* note 7, at 186, where builders from Detroit, Chicago, Los Angeles, and Norfolk, Va., describe the local governments' means to enforce their opposition to open housing.

Negroes from entering all-white communities,[16] as have suburban zoning and land use requirements.[17] Other restrictive zoning policies, such as minimum lot size requirements, often have had the effect of keeping all but the relatively affluent out of the suburbs.[18]

Federal housing policy also has contributed to racial separation between city and suburb. The programs of the Federal Housing Administration (FHA) and Veterans' Administration (VA) have been key factors in the rapid growth of middle-class, white suburban communities.[19] During 1965, some $150 billion in mortgage loans, representing more than 15 million housing units, were insured or guaranteed under these programs.[20] The practices of these two agencies during the post-World War II years of great suburban expansion paralleled and supported the discriminatory practices of private industry.[21]

Until 1947, for example, FHA actually encouraged the use of racially restrictive covenants to assure racial homogeneity.[22] Not until the issuance of the Executive Order on Equal Opportunity in Housing [23] in 1962 could it be said that FHA and VA policy was one of nondiscrimination. The Executive Order, however, is limited largely to new housing assisted by FHA and VA. Their share of the new housing market, which during the suburban housing boom of the late 1940's and 1950's often exceeded 30 percent, has decreased to well under 20 percent.[24] The millions of suburban housing units the two agencies helped to produce in past years when they were a dominant force in the housing industry remain largely unaffected by the Executive Order's requirement of nondiscrimination. Thus, present Federal nondiscrimination policy does not reach much of the housing the Federal Government subsidized under policies which countenanced or encouraged discrimination, and efforts to obtain a national law broader in coverage thus far have proved unsuccessful.[25]

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[16] See, *e.g.*, *Wiley* v. *Richland Water District*, Civil No. 60-207, D. Ore., June 30, 1960, 5 Race Rel. L. Rep. 788 (1960), where the land upon which Negro families had planned to construct a home was condemned by the local water district for further development and sanitation control. See also *City of Creve Coeur* v. *Weinstein*, 329 S.W. 2d 399 (St. Louis Ct. of App. 1959), where the court upheld the condemnation for public recreational purposes of land owned by a Negro family in a previously all-white neighborhood.

[17] *See e.g.*, Frieden, "Toward Equality of Urban Opportunity," *XXXI Journal of American Institute of Planners* 323 (1965).

[18] See for an example, *Hearing before the U.S. Commission on Civil Rights in Cleveland, Ohio*, 205–211, 726–729 (Apr. 1–7, 1966) (hereinafter cited as *Cleveland Hearing*).

[19] For a detailed discussion of the role of FHA and VA in the development of residential segregation, see 1961 Commission Housing Report 9–26.

[20] Data supplied by Lee Amman of the FHA Statistics Division and R. C. Coon of the VA Loan Policy Division on Oct. 11, 1966. FHA programs have been operating since 1934 and VA programs since 1944.

[21] See Weaver, *The Negro Ghetto*, 72 (1948); Abrams *op. cit. supra*, note 7, at 229–237.

[22] The FHA Underwriting Manual of 1938 declared: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial groups." The manual carried this principle a step further by providing a model racially restrictive covenant and recommended its use. See 1961 Commission Housing Report 16.

[23] Exec. Order No. 11063, 27 Fed. Reg. 11527 (1962). A number of States and localities have adopted fair housing laws. For a collection of such laws, see HHFA, *Fair Housing Laws* (1964).

[24] In 1954 the combined FHA and VA share of the market was 35.5 percent; in 1955, 41.1 percent; in 1956, 34.7 percent. By 1964 the combined FHA and VA share of the new housing market had been reduced to 17 percent. Computations based on HHFA 18 Ann. Rep. 383 (1964).

Equally important is the fact that Federal housing programs have not made a comparable investment in housing to meet the needs of lower-income families, of whom Negroes make up a disproportionate share. The few Federal programs that do seek to provide such housing do not provide it on a metropolitan basis. Indeed, they are having the effect of intensifying concentrations of the poor and nonwhite within central cities.

Low-rent public housing, for example, is an important source of housing for Negroes.[26] In metropolitan areas it has been confined almost entirely to central cities. State laws vary on where public housing developments may be placed. In some States, city housing authorities may operate in suburban areas but the consent of the governing body of the community in which the public housing is to be built always must be obtained.[27] Of the quarter of a million public housing units that have been built by city public housing authorities in the Nation's 24 largest metropolitan areas, in only one, Cincinnati, has the city housing authority been permitted to build outside the central city. There the authority has provided a total of 76 low-rent units in the suburbs.[28] In effect, therefore, the public housing program has served to intensify the concentrations of the poor and the nonwhite in the central city.

The FHA 221(d)(3) program, designed to assist private industry in providing rental housing for lower- and moderate-income families, also produces housing largely confined to central cities. Under existing legislation projects may be constructed only in communities which have adopted a "workable program for community improvement." [29] Since most cities have such "workable programs" and few suburbs do,[30] the majority of units in the program have been constructed in central cities.[31] FHA-assisted builders of private suburban housing are free to build without regard to whether the community maintains a "workable program." But where private enterprise is being utilized to provide housing for lower-income families under 221(d)(3), Congress, by imposing the "workable program" requirement, has given local governments the power to prevent the building of projects within their boundaries. Even if this form of local government veto power should be removed, thereby permitting the housing industry to build low-income housing in the suburbs, the impact of the 221(d)(3) program would not be great because of the limited volume of housing the program can produce.[32]

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[25] During the last session of Congress, a civil rights bill, H.R. 14765, 89th Cong. 2d sess. (1966), containing a broad fair housing law, was passed by the House of Representatives on Aug. 9, 1966. It was not passed by the Senate, however.

[26] As of March 1966, of the 587,520 occupied public housing units, 273,097 were occupied by Negroes. Data obtained from Louis Katz, head of Statistics Division, Housing Assistance Administration, Department of Housing and Urban Development, Oct. 6, 1966.

[27] Memorandum dated Oct. 3, 1966, from Ruth E. Dunlop, Legislative Attorney, Housing Assistance Administration, Department of Housing and Urban Development, to the U.S. Commission on Civil Rights.

[28] Data supplied by Louis Katz, note 26 *supra*, on Oct. 31, 1966.

[29] Housing Act of 1949, sec. 101(c), amended by 75 Stat. 149, 153 as amended 42 U.S.C. 1451(c) (1964).

[30] According to one official, at least 75 percent of the suburbs do not maintain workable programs. Interview with Maurice Davis, Office of the Secretary, Department of Housing and Urban Development, Oct. 12, 1966.

The rent supplement program, authorized in 1965, potentially can produce a larger volume of low-income housing outside central cities.[33] But here, too, Congress has given local governments a veto power by requiring that there either be a "workable program" in the community or that the local governing body specifically approve the operation of the program in the community.[34] The volume of housing the rent supplement program can produce has been curtailed because Congress has appropriated less than half the funds authorized for the program's operation in its first two years.[35]

Low-cost housing, then, is produced under governmental policies which result in its being made available largely in the central city, further reinforcing the trend toward racial and economic separation in metropolitan areas.

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[31] While no precise statistics are available on this point, this was the estimate of the Market Analysis and Research Section, Research and Statistics Division, FHA. Information obtained from Sigmund Shapiro of the Market Analysis and Research Section, Oct. 10, 1966.

[32] During the five years of the program's existence, it has produced only 47,000 units. Commitments are outstanding for another 9,500 units and applications are being processed for an additional 30,000 units. Data obtained from the Research and Statistics Division, FHA, Sept. 27, 1966.

[33] The rent supplement program uses the ordinary channels of the private housing market and provides assistance through direct payments of a portion of the rent on behalf of needy families. The housing produced under the program is privately owned, privately constructed, and privately financed through FHA-insured market-interest-rate loans under the 221(d)(3) program. Thus, the rent supplement program is different from the low-rent public housing program. Public housing involves governmental bodies almost exclusively, both in terms of financing and ownership of the housing, while the rent supplement program involves private financing and private ownership. The Federal assistance in the rent supplement program is limited to payments pursuant to a precise formula to private house owners on behalf of tenants who require these payments to afford the market rents.

[34] The original authorization for a rent supplement program, Housing and Urban Development Act of 1965, 79 Stat. 451a 12 U.S.C. 1701 (Supp. I, 1964) did not contain such a restriction but it was imposed by the Independent Offices Appropriation Act of 1967, 80 Stat. 663.

[35] Of the $150 million authorized for the four-year program, $65 million was authorized for the first two years of operation. Congress appropriated $12 million for the first year and $20 million for the second. First Supplemental Appropriation Act for 1966, 79 Stat. 1133 ($12 million) and Independent Offices Appropriation Act of 1967 (note 34 *supra*) ($20 million).

Thus the practices of the private housing industry and government at all levels have combined to reinforce the separation of the poor and the nonwhite from middle-class whites.

Fiscal Disparities

The trend toward racial and economic isolation between city and suburbs also has been reinforced by the manner in which schools are financed. Education, like many other governmental functions, is financed in large part from property taxes levied by local jurisdictions.[36] Under this system of financing, the adequacy of educational services is heavily dependent on the adequacy of each community's tax base. With the increasing loss of their more affluent white population, central cities also have suffered a pronounced erosion of their fiscal capacity. At the same time the need for city services has increased, particularly in the older and larger cities. The combination of rising costs and a declining tax base has weakened the cities' capacity to support education at levels comparable to those in the suburbs.[37] As the gap between educational services in the cities and suburbs has widened, more affluent white families have been afforded further inducement to leave the cities, again intensifying racial and economic isolation and further widening the gap.

Part of the growing need for urban services arises from increasing poverty and urban decay, but the sources of declining fiscal capacity are more complex. The suburbanization of service industries has left the cities with an increasing proportion of heavy industry which employs blue-collar, and often unskilled workers, many of whom are Negroes. The movement of service industries to the suburbs, on the other hand, not only has depleted taxable property in the cities, but also has encouraged the suburbanization of white-collar workers.[38] Whites have no

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[36] Bollens and Schmandt, *The Metropolis* 171 (1965).

[37] See, generally, Benson, "Education Finance and Its Relation to School Opportunities of Minority Groups," prepared for the U.S. Commission on Civil Rights (1966) (hereinafter cited as *Benson Study*).

[38] "Even a conservative view must anticipate the exodus of a large segment of retail and other nonmanufacturing businesses from downtown centers. Abandonment of these centers will lead to a host of municipal problems not the least of which is the loss of substantial tax base. These economic developments are at once a step towards, and a consequence of, the city-suburban bifurcation of races that promise to transform many central cities into low-class ethnic islands." Grodzins, "The Metropolitan Area as a Racial Problem," in *American Race Relations Today* 102 (Rabb ed. 1962). "Although central cities are losing some manufacturing industry to suburban areas as well as nonmetropolitan areas, they have nevertheless maintained the preponderant share of the Nation's total manufacturing enterprises." Kitagawa and Bogue, *Suburbanization of Manufacturing Activity Within Metropolitan Areas* 15 (1955).

See also U.S. Department of Labor unpublished study, quoted in U.S. Dept. of Labor News Release 7359, Aug. 15, 1966:

"A growing concentration of new industrial and commercial building in suburbs is intensifying the employment problems of the big-city poor—especially Negroes.

". . . between 1954–65 more than half of all new industrial buildings and stores were built outside the central cities of the Nation's metropolitan areas.

Footnote continued on following page.

trouble moving to the suburbs, but housing discrimination and income disparities pose barriers for Negroes. Thus, the suburbanization of industry tends to concentrate more taxable property and white families of higher income and higher educational attainment in the suburbs.

As a result, central cities contain an increasingly disproportionate share of the poor and the nonwhite populations, and must carry heavier financial burdens in low-income housing and public assistance programs. In addition, cities must spend a considerable amount of their total budgets for services, such as fire and police protection, sanitation and transportation, the benefits of which are shared by non-residents. All these claims on city budgets—which are much less pressing in most suburbs—reduce the proportion that can be allocated to education.[30]

Table 4 shows that cities spend a third more per capita for welfare and two times more per capita for public safety than suburbs, while suburbs spend more than half again as much per capita for education. Suburbs spend nearly twice the proportion of their total budget upon education as cities. The greater competition for tax dollars in cities seriously weakens their capacity to support education. Even though school revenues are derived from property tax levies, which in theory are often independent of other principal taxes, city school authorities must take this greater competition into account in their proposals for revenue

TABLE 4.—*Expenditures for urban services in central cities and suburbs, 1957*

	Central cities	Suburbs
Average per capita expenditure for fire and police	$27. 5	$13. 0
Proportion of average general expenditure	12. 6	7. 0
Average per capita expenditure for welfare	$18. 2	$11. 6
Proportion of average general expenditure	8. 3	6. 2
Average per capita expenditure for education	$58. 1	$85. 9
Proportion of average general expenditure	31. 3	53. 8

Source: Data on fire, police, and welfare expenditures (12 metropolitan areas) from Brazer, "Some Fisca Implications of Metropolitanism" in *Metropolitan Issues: Social, Governmental, Fiscal* Aug. 20-30, 1961 at 72. Data on education expenditure (36 metropolitan areas) from Sacks, *Metropolitan Areas' Finances* (unpublished manuscript in Commission files) App. A2-1 (1966).

"Since the Negro population is rising rapidly in the Nation's big cities, the trend toward more business building in the suburbs is particularly hard on Negroes.

"This reveals a long-term tendency for major sources of employment to be located quite a distance from the residence of workers with a very high incidence of unemployment and poverty. As a result many residents of central cities—whose incomes tend to be lower than those of others—will find travel to and from work in suburbs more expensive and time-consuming."

Grodzins, *supra* at 102. "The relative immobility of heavy (manufacturing) industry has the result of fixing the laboring and semiskilled groups, including large numbers of Negroes, within the central cities." See also, Cuzzort, *Suburbanization of Service Industries Within Standard Metropolitan Areas* (1955).

[30] See Brazer, "Some Fiscal Implications of Metropolitanism," reprinted from *Metropolitan Issues: Social, Governmental, Fiscal* (July 1962), in 61 *Brookings Institution,* 71 (1962) and Sacks, *Metropolitan Area Finances* 20 (unpublished study in the files of the U.S. Commission on Civil Rights) (1964).

increases. City school systems thus are faced with increasing needs for educational expenditures, declining fiscal capacity, and increasing competition within the city for shares of tax revenue.

With the increasing fiscal pressures on cities, a relative decline in their expenditures for education compared to suburbs has been almost inevitable. As Table 5 shows, the cities in 12 large metropolitan areas led in expenditures for instruction in 1950. In almost all cases they spent considerably more per pupil than the average suburb and in many cases more per pupil than any of their suburbs. By 1964, however, these same cities had slipped to the point where most were spending less than the suburban average.[40]

As the table indicates, all school districts have increased spending on instruction but the increase typically has been greater in the suburbs. In 1950, the per pupil expenditure in the central city exceeded the average suburban expenditure in 10 of the 12 metropolitan areas. By 1964, the average suburb was spending more than the central city in seven of the 12 metropolitan areas.

State education aid often does not help to close the gap. State grants to assist local school districts sometimes are made on a direct matching basis, and often on the basis of a formula designed to eliminate inequities

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[40] The figures are somewhat different for teachers' salaries. As the table below shows, in many cases teacher salary expenditures per pupil still are higher in the city than in the average suburb.

Teacher salary expenditures per pupil

Place	Amount per pupil, 1950	Amount per pupil, 1964	Percent change, 1950-64	Absolute dollar change, 1950-64
Baltimore City	$166	$335	101.8	$169
Suburbs	122	345	182.8	223
Birmingham City	103	190	84.4	87
Suburbs	86	182	111.6	96
Boston City	172	360	109.3	188
Suburbs	162	390	140.7	228
Buffalo City	190	310	63.1	120
Suburbs	164	276	68.3	112
Chattanooga City	114	233	104.4	119
Suburbs	115	217	88.7	102
Chicago City	(1)	(1)	(1)	(1)
Suburbs	(1)	(1)	(1)	(1)
Cincinnati City	167	267	59.9	100
Suburbs	132	257	94.6	125
Cleveland City	151	244	61.5	93
Suburbs	148	292	97.3	144
Detroit City	172	295	71.5	123
Suburbs	153	288	88.2	135
New Orleans City	164	241	46.9	77
Suburbs	106	208	96.2	102
St. Louis City	(1)	267	---------	---------
Suburbs	127	320	152.0	193
San Francisco City	198	390	96.9	192
Suburbs	140	298	112.9	158

[1] Not available.

Source: *Benson Study* 31.

Table 5.—*Instructional expenditures per pupil*

Place	Amount per pupil, 1950	Amount per pupil, 1964	Percent increase, 1950-64	Absolute dollar increase, 1950-64
Baltimore City	$181	$346	91.2	$165
Suburbs	165	364	120.6	199
Birmingham City	116	225	93.9	109
Suburbs	97	228	135.0	131
Boston City	184	401	117.9	217
Suburbs	177	431	143.5	354
Buffalo City	213	362	69.9	149
Suburbs	285	375	31.6	90
Chattanooga City	121	280	131.4	159
Suburbs	119	248	108.4	129
Chicago City	181	396	118.7	215
Suburbs	197	414	110.2	217
Cincinnati City	197	340	72.6	143
Suburbs	149	332	122.8	183
Cleveland City	179	325	81.5	146
Suburbs	162	407	151.2	245
Detroit City	196	363	85.2	167
Suburbs	183	361	97.2	178
New Orleans City	171	256	49.7	85
Suburbs	108	220	103.7	112
St. Louis City	176	323	83.5	147
Suburbs	159	396	149.1	237
San Francisco City	212	442	108.4	230
Suburbs	159	409	157.2	250

Source: *Benson Study* at 30.

in expenditures among school districts.[41] In many metropolitan areas, however, the equalizing effect of State funds is only partial. As Table 6 reveals over the past 15 years, State contributions to city school systems often have shown a greater proportionate increase than the average of State grants to the suburbs. Yet in 7 of the 12 metropolitan areas, States now are contributing more per pupil to the suburban schools than to those in the cities. In light of the generally higher suburban expenditures, it would appear that the pattern of State education aid within metropolitan areas no longer fully corresponds to fiscal need. State aid programs designed decades ago to assist the then poorer suburban districts often support the now wealthier suburbs at levels comparable to or higher than the cities.

Federal aid to education had no consistent equalizing effect before 1965. National Defense Education Act funds, for example, have been too small in proportion to total local expenditures to have had any noticeable impact upon the city-suburban imbalance. Indeed, funds under that Act sometimes have gone disproportionately to suburban schools.[42] Funds allocated under legislation to aid federally impacted areas never were intended to have an equalizing effect. Title I of the 1965 Elementary and Secondary Education Act, however, was designed specifically to provide additional funds to those school systems with concentrations of families in poverty and, as Table 7 shows, these funds have had an equalizing effect. Nonetheless, Federal aid—which, during the 1965–66 school year, accounted for less than 8 percent of total education

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[41] See generally Benson, *The Cheerful Prospect* (1965).

[42] See Campbell and Bunnell, "Differential Impact of National Programs on Secondary Schools," 1963 *School Review* 476.

TABLE 6.—*Revenues per pupil from State sources*

Place	Amount per pupil		Percent increase, 1950-64	Absolute dollar increase, 1950-64
	1950	1964		
Baltimore City	$71	$171	140. 8	$100
Suburbs	90	199	121. 1	109
Birmingham City	90	201	123. 3	111
Suburbs	54	150	177. 7	96
Boston City	19	52	173. 7	33
Suburbs	30	75	150. 0	45
Buffalo City	135	284	110. 4	149
Suburbs	165	270	63. 6	105
Chattanooga City	62	136	119. 4	74
Suburbs	141	152	7. 8	11
Chicago City	42	154	266. 6	112
Suburbs	32	110	243. 8	78
Cincinnati City	51	91	78. 4	40
Suburbs	78	91	16. 7	13
Cleveland City	50	88	76. 0	38
Suburbs	39	88	125. 6	49
Detroit City	135	189	40. 0	54
Suburbs	149	240	61. 1	91
New Orleans City	152	239	57. 2	87
Suburbs	117	259	121. 4	142
St. Louis City	70	131	87. 1	61
Suburbs	61	143	134. 4	82
San Francisco City	122	163	33. 6	41
Suburbs	160	261	63. 1	101

Source: *Benson Study* at 28.

TABLE 7.—*Entitlements for grants under title I, Elementary and Secondary Education Act, fiscal year 1966*

Place	Entitlements per pupil in average daily attendance	Place	Entitlements per pupil in average daily attendance
Baltimore City	$41	Cincinnati City	$39
Suburbs	11	Suburbs	8
Birmingham City	31	Cleveland City	35
Suburbs	21	Suburbs	9
Boston City	43	Detroit City	44
Suburbs	13	Suburbs	11
Buffalo City	78	New Orleans City	48
Suburbs	14	Suburbs	16
Chattanooga City	35	St. Louis City	50
Suburbs	15	Suburbs	7
Chicago City	66	San Francisco City	38
Suburbs	9	Suburbs	16

Source: *Benson Study* at 25.

expenditures—has not eliminated the gap between city and suburban school systems.[43]

Fiscal differentials of this magnitude have a measurable impact on the tangible quality of education offered in city and suburban schools.[44] Suburban schools, in many cases, have more library volumes per student, markedly smaller classes, more specialized teaching staffs, and more adequate facilities—such as those for teaching science and languages.[45]

Suburban school systems are able to select their teachers from a much larger pool of applicants than central city systems. Moreover, suburban teachers tend to be younger, from better-educated families, and to have had greater variety in their prior teaching experience than those in the cities.[46] There is no consistent evidence that suburban teachers receive substantially higher salaries.[47] Other considerations such as superior facilities and lower pupil-teacher ratios probably draw them to the suburbs. In addition, the overwhelming majority of America's teachers, and of college students who intend to teach, express a preference for academically oriented schools—with a high proportion of middle-class children.[48] Such schools usually are found in the suburbs.

Schools inevitably mirror their environment. Within metropolitan areas, the growing racial isolation and social stratification are reflected in the schools. All signs—the educational character and the racial composition of suburban schools, the preferences of teachers, the comparative

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[43] *Benson Study* at 2. When Table 7 is read in conjunction with Table 5, it can be seen that of the seven metropolitan areas in which the average suburb was spending more on instruction per pupil than the central city in 1964, aid under the 1965 Elementary and Secondary Education Act would leave two central cities (Cleveland and St. Louis) lagging behind the average suburb. The more affluent suburbs would remain well ahead of the central cities despite the Federal aid.

[44] For a discussion of the relationship of school quality to student achievement, see ch. 3 at 92–100.

[45] Analysis by the U.S. Commission on Civil Rights of data from *OE Survey*. See App. B, vol. II.

[46] Analysis, note 45 *supra*.

[47] For example, the table below shows the salary range for teachers in city and suburban schools in the northeastern part of the Nation. See also App. B, vol. II.

	In the city	In the suburbs
Percent of teachers whose salaries are—		
Below $3,000	0.7	0.9
Between $3,000 and $3,999	.3	.2
Between $4,000 and $4,999	1.9	2.4
Between $5,000 and $5,999	18.6	24.3
Between $6,000 and $6,999	16.5	17.9
Between $7,000 and $7,999	18.3	18.9
Between $8,000 and $8,999	11.8	18.1
Between $9,000 and $9,999	9.9	9.9
$10,000 or more	21.7	7.0

Analysis by the U.S. Commission on Civil Rights of data from *OE Survey*.

[48] *OE Survey* 167 (elementary school teachers), 169 (secondary school teachers), 354–364 (discussion of findings).

levels of fiscal support, and the movement of wealth and population—point to the perpetuation of the cycle of metropolitan stratification and isolation. The process has developed a momentum of its own that cannot easily be reversed.

Thus the growing racial, social, and economic disparities between cities and suburbs are reflected in virtually all facets of the educational environment of city and suburban schools, and the disparities in the schools in turn encourage the process of separation. There are many reasons for the migration to the suburbs, but schools play a significant part. As suburban school systems spend more for education than the cities, recruit more capable teachers, reduce class size and improve facilities, they tend to attract increasing numbers of middle-income families—the overwhelming majority of them white. Given the lesser competition for tax revenues in the suburbs, they can spend more for education at lower overall tax rates than the cities. Conversely, as cities attempt to improve education through increased local expenditures, they must raise property tax rates—already relatively high—even higher. This provides a further inducement for movement to the suburbs.

Racial Isolation and the Central City

In the public schools of the central cities there are also pronounced patterns of stratification and racial isolation. One reason is the high level of residential segregation common to all cities[49]—a product of private discrimination, State and local government practices, and the impact of federally assisted housing programs. When children are assigned to schools on the basis of residential proximity, rigid residential segregation intensifies racial isolation in the schools.

Private and parochial school enrollment, which is overwhelmingly white,[50] also is a significant factor in the increasing separation of white and Negro school children. In addition, the policies and practices of city school systems play an important role.

Central City Housing

Residential segregation, now common to all major cities in the Nation, is severe. The maps, for example, show intense racial concentrations in Chicago, Ill., and St. Louis, Mo.

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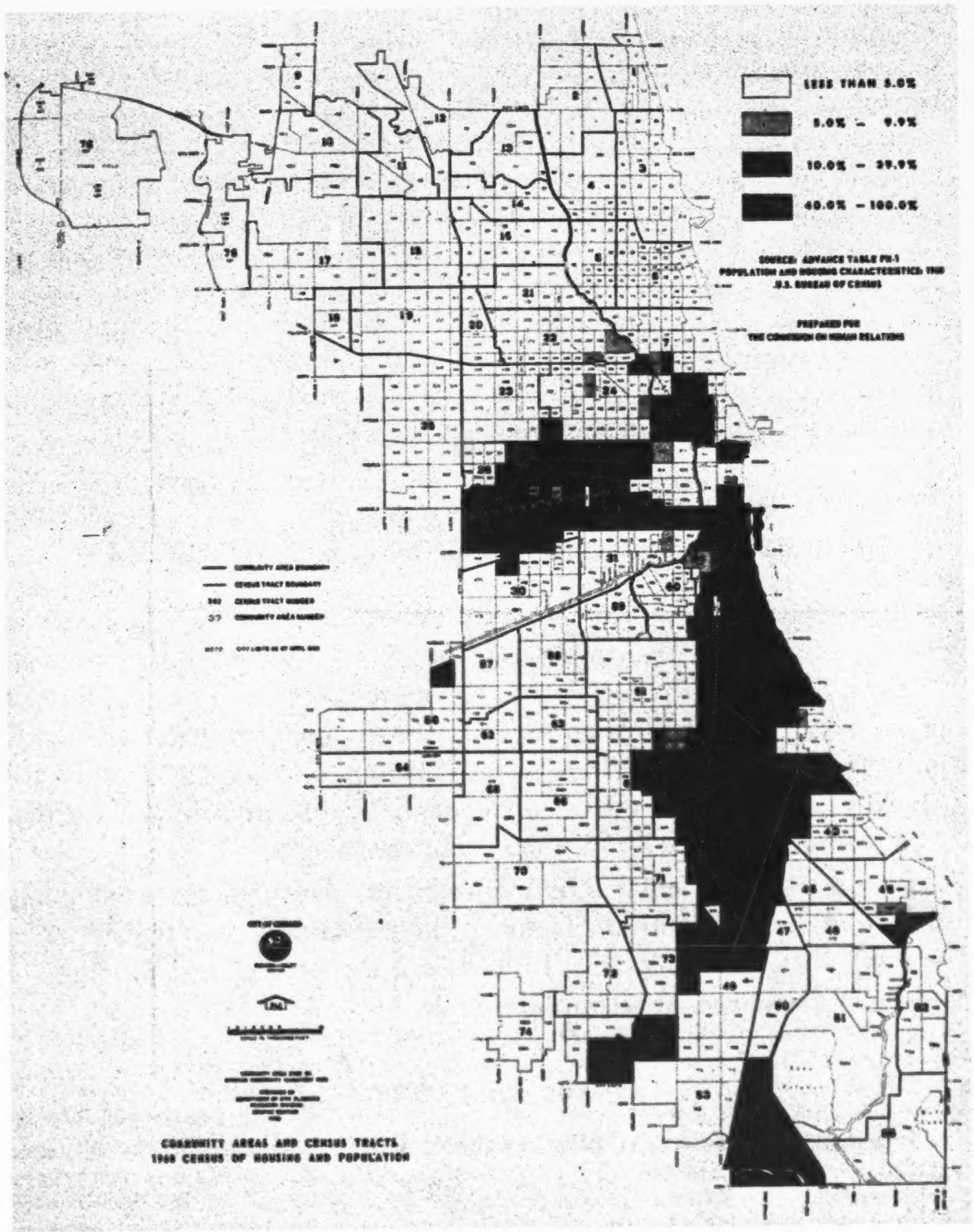
[49] Taeuber & Taeuber, *Negroes in Cities* (1965).

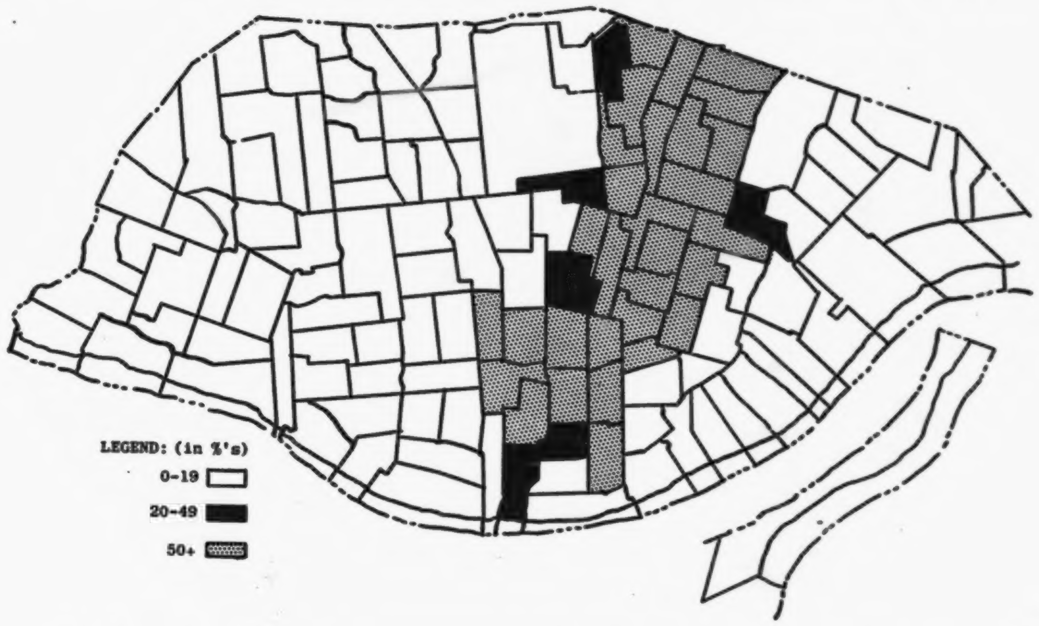
[50] In 1960, of the more than 4 million pupils enrolled in nonpublic elementary schools in the United States, only 140,529 were nonwhite. 44,308 nonwhites were attending

Footnote continued on page 33.

Map 1.—Percent of Negro population, in census tracts, city of Chicago, 1960


LESS THAN 5.0%
5.0% – 9.9%
10.0% – 39.9%
40.0% – 100.0%
SOURCE: ADVANCE TABLE PH-1
POPULATION AND HOUSING CHARACTERISTICS 1960
U.S. BUREAU OF CENSUS
PREPARED FOR
THE COMMISSION ON HUMAN RELATIONS
COMMUNITY AREA BOUNDARY
CENSUS TRACT BOUNDARY
CENSUS TRACT NUMBER
37 COMMUNITY AREA NUMBER
COMMUNITY AREAS AND CENSUS TRACTS
1960 CENSUS OF HOUSING AND POPULATION

Map 2.—Percent distribution of Negro population of St. Louis by census tract, 1960



In large measure the responsibility for these concentrations must be shared, as in the exclusion of Negroes from the suburbs, by the private housing industry and by government. Discriminatory practices of city landlords, lending institutions, and real estate brokers have accentuated the residential confinement of Negroes.[51]

Policies and practices of State and local governments that have encouraged the racial and economic separation between cities and suburbs have accomplished the same result within the cities. Here, too, racial zoning ordinances and the judicial enforcement of racially restrictive covenants have played a major role.

Other decisions made at all levels of government also have contributed substantially to city patterns of residential segregation. Local public housing authorities, instead of locating projects on small sites scattered throughout the city, have concentrated them in large blocks located in limited areas of the city, frequently in the sections where racial concen-

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nonpublic secondary schools which had a total enrollment of more than 1 million. U.S. Bureau of the Census, *1960 Census of Population,* PC(2)–5A, Table A–1, at 129 (1964).

[51] See, *e.g., 1961 Commission Housing Report* 2–3. In addition, the device of "blockbusting" utilized by some real estate brokers has helped to transform integrated city neighborhoods into all-Negro neighborhoods. The practice of "blockbusting" involves the deliberate harassment of white property owners in integrated neighborhoods to induce "panic-selling," generally at below market prices. By this means, some brokers acquire these properties at a low price and then resell them to Negro families at inflated prices. The process of harassment then typically continues until the neighborhood becomes all Negro. For an account of "blockbusting" tactics, see U.S. Commission on Civil Rights *1959 Report,* 379–80 (1959).

trations are most dense.[52] Local improvement programs, such as urban renewal and highway construction, have displaced large numbers of low-income nonwhite families who often have no alternative but to relocate in areas of existing racial concentrations, thereby intensifying residential segregation.[53]

The Federal Government shares with State and local governments the responsibility for decisions that increase residential segregation within cities. Low-income housing programs, although carried out by private parties and local government agencies, usually are federally subsidized, and key determinations such as site selection are made with Federal approval. Similarly, local improvement programs often are heavily financed by the Federal Government and are subject to Federal approval. The Commission has reviewed the impact on racial concentrations in the city, and in the city schools, of three important Federal programs—FHA 221(d)(3), urban renewal, and low-rent public housing.

As noted earlier, the Federal Housing Administration's 221(d)(3) program of assisting private industry in building rental projects for lower- to middle-income families has been primarily a central city program. In view of the high degree of residential segregation in cities, the sites selected for these projects can be important factors in either intensifying or reducing racial concentrations. They often reinforce existing racial concentrations. Of the two sites selected for FHA 221(d)(3) projects in Chicago, for example, one was in a virtually all-white area; the other in an all-Negro neighborhood. The projects, now fully occupied, have occupancies 99 percent white and 100 percent Negro respectively. The elementary schools serving the projects are 98.5 percent white and 99.6 percent Negro, respectively.[54] In Boston, three projects recently built in an urban renewal area each have a nonwhite occupancy of approximately 87 percent. During the 1965–66 school year, the schools serving the project children ranged from 91 to 100 percent nonwhite.[55]

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[52] See pp. 36–38, *infra.* See also *1961 Commission Housing Report*, 112–14.

[53] For example, in St. Paul, Minn., which is 97 percent white, a freeway eliminated the housing for 311 Negro householders. This number represented 72 percent of all the displacement caused by the freeway, and it displaced 15 percent of the city's Negro housing. Furthermore, only 35 percent of those displaced Negro householders who sought housing outside the ghetto obtained it, while all the displaced white householders who sought such housing obtained it. Davis, "The Effects of a Freeway Displacement on Racial Housing Segregation in a Northern City," 1965 *Phylon*, 209–15. See also the account of a Negro resident of Cleveland who was displaced to make room for Interstate Highway 71. *Cleveland Hearing*, 175–79. For a discussion of the impact of urban renewal in displacing nonwhite families, see pp. 35–36, *infra.*

[54] The projects are the Barry Avenue Apartments, 99 percent white, and Englewood Manor, 100 percent Negro. The schools serving the former are Nettlehorst (elementary, 98.5 percent white) and Lakeview (high school, 95 percent white). The schools attended by children living in Englewood Manor are Deneen (elementary, 99.6 percent Negro), Parker (high school, 99.9 percent Negro). School enrollments are for 1965–66. Interviews with Ernest C. Stevens, Executive Director, and Napoleon P. Dotson, Intergroup Relations Adviser, Chicago FHA Insurance Office, Sept. 20 and 29, 1966.

The Federal Housing Administration, which has the responsibility for administering the program, states that it "examines carefully the site on every multifamily housing project which it insures, and particularly with respect to 221(d)(3) projects."[56] FHA's concern, however, is limited to economic feasibility. It does not base its decisions upon the impact a proposed 221(d)(3) project may have on the racial composition of the neighborhood or the schools.[57]

The main impact of urban renewal on residential patterns and racial composition of the public schools is through the relocation of families it displaces.[58] More than 60 percent of the families displaced since 1949 whose color is known are nonwhite.[59] The Department of Housing and Urban Development, which administers the program, sets certain standards of safety, sanitation, and costs to assure that the new homes of families and individuals who will be displaced will be adequate and within their means. But the Department does not look into each relocation plan to determine the impact of relocation in intensifying or reducing racial concentrations.[60] Neither does it determine the impact of relocation on the racial composition of schools.[61]

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[55] The three projects are Academy Homes, Clarksdale Gardens and Charlame Park Homes. Interview with Richard K. Tyrrell, Deputy Director, and James A. Feely, Chief Underwriter, Boston FHA Insuring Office, Aug. 19, 1966. The schools serving these projects are W. L. P. Boardman, David A. Ellis, Ellis Annex, Julia Ward Howe, and Libby Nay. Interview with Charles Q. Lynch, Director of Statistics for the Boston School Committee, Sept. 29, 1966.

[56] Memorandum from P. N. Brownstein, Assistant Secretary-Commissioner, FHA, Aug. 26, 1965, forwarded to the Commission by Hon. Robert C. Weaver, Secretary, Department of Housing and Urban Development, in response to a series of questions related to policies and practices of that Department (hereinafter cited as *Weaver Letter Enclosures*).

[57] *Ibid.*

[58] The urban renewal program also affects racial concentrations through the reuse of urban renewal project land. In 1964, the then Urban Renewal Administration claimed that "Some 60 percent of all dwelling units on project land disposed of during the year ending in mid-1964 was within the reach of low- and middle-income families. . . ." HHFA 18 Ann. Rep. 323 (1964). By the end of 1965, however, only some 84,000 dwelling units had actually been provided on urban renewal land since the inception of the program. During the same period more than 333,000 dwelling units were demolished through urban renewal. Thus the program has demolished three times as many homes as it has produced. Statistics provided by the Office of Program Planning, Renewal Assistance Administration, Department of Housing and Urban Development, Sept. 28, 30, and Oct. 10, 1966.

[59] Data obtained from the Office of Program Planning, Renewal Assistance Administration, Department of Housing and Urban Development, note 58 *supra*.

[60] Memorandum from Madison S. Jones, Director, Office of Relocation and Rehabilitation, Renewal Assistance Administration, dated Aug. 24, 1966, (*Weaver Letter Enclosures*).

[61] *Ibid.* In March 1966, the then Urban Renewal Administration announced the following policy: "All local public agencies carrying out relocation activities . . . shall maintain lists of, and refer families and individuals to, only housing which is available on a nondiscriminatory basis." Local public agency letter No. 364, Mar. 17,

Footnote continued on following page.

In a number of cities, urban renewal has intensified existing racial residential concentrations. In Cleveland, for example, four urban renewal projects displaced 1,300 families. Fully 1,100 of them were nonwhite, and 88 percent of the nonwhite families relocated in areas already more than 50 percent nonwhite.[62] The impact upon schools is equally pronounced. In Boston, two schools located near an urban renewal area were 30 and 50 percent nonwhite, respectively, in 1960. After clearance and relocation (between 1962 and 1964), 25 percent of the families displaced relocated in the general area served by the two schools. By 1964 the schools' nonwhite enrollment had risen to 53 percent and 87 percent, respectively.[63]

By far the most important Federal housing program, in terms of its impact on central city residential segregation, is low-rent public housing. For almost 30 years it has been the primary source of standard housing for the urban poor. In many cities, North and South, public housing projects have been segregated by race, sometimes by official policy.[64] Although racial segregation in public housing projects through overt Government policy now is rarely found, projects in Northern cities still are frequently nearly all-white or nearly all-Negro.[65]

The Department of Housing and Urban Development, which administers this program, is concerned about the impact of each project

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1966. This policy, however, affects only listings and referrals during the execution phase of the project, and does not relate to housing that a local public agency may use for relocation resource purposes. Thus, a local public agency may satisfy the Department that there is adequate relocation housing available, without regard to whether this housing is in fact available on a nondiscriminatory basis. The Department's policy means only that the local public agency, in assisting displaced families in securing relocation housing, may only refer them to housing available on a nondiscriminatory basis. This may well mean "Negro housing" in "Negro neighborhoods." Although this new policy requirement has not yet had a demonstrable effect, it may well result in intensifying racial concentrations rather than contributing to open occupancy. In no case does the Department insist that the operation of the urban renewal program must result in reducing concentrations of nonwhites in the community or in the schools.

[62] *Cleveland Hearing*, at 706–7.

[63] Interview with Anthony Galeota, chief structural engineer of the Boston School Committee, Aug. 18, 1966. The project is Washington Park. The schools are Sara Greenwood and William Endicott. A substantial increase in the enrollment of these schools has resulted in the need to bus children out of the school because of overcrowding.

[64] In San Francisco and Detroit, for example, governmentally enforced segregation in public housing was practiced well into the 1950's. See *Banks* v. *Housing Authority*, 260 P. 2d 668 (1st Dist. Ct. App. Calif. 1953), *cert. denied* 347 U.S. 974 (1954); *Detroit Housing Comm'n* v. *Lewis*, 226 F. 2d 180 (6th Cir. 1955), where such segregation was held unconstitutional.

[65] In Cleveland, for example, of the 11 public housing projects in the city, 4 are more than 90 percent white and 3 are 90–100 percent Negro. *Cleveland Hearing*, at 137.

on schools and on neighborhood racial concentrations.[66] Nonetheless, public housing often has intensified racial concentrations in central city schools.[67]

In San Francisco, for example, six projects totaling more than 2,300 units, each predominantly Negro, are grouped on one piece of land called Hunter's Point. The schools in the area that serve the housing projects all are more than 90 percent Negro.[68] In Cincinnati, two nearby projects—Lincoln Court and Laurel Homes—total almost 2,300 units. Together the projects are 99.7 percent nonwhite, and house 2,616 school-age children. Schools serving the development, many of them built specifically for that purpose, are all predominantly nonwhite.[69]

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[66] For example, the Department requires information on the adequacy (but not the racial composition) of schools that will serve each project and attempts to determine the probable racial composition of a proposed public housing project, and the proposed project's impact on the racial composition of the neighborhood or the impact of the racial composition of the neighborhood on the proposed project. Information supplied in memorandum from Housing Assistance Administration, *Weaver Letter Enclosures*, table A at 4.

[67] Secretary Weaver informed the Commission: "HUD makes no attempt to assess the racial impact of a proposed public housing project on the composition of the schools serving the area, unless this evaluation arises as part of the delineation of the impact of the proposed project on the neighborhood and its facilities as a whole. The racial composition of surrounding schools may or may not be known to HUD reviewers." Information supplied in memorandum from Housing Assistance Administration (*Weaver Letter Enclosures*). It is not clear whether HUD has any meaningful policy regarding the impact of site selection on racial concentrations in public housing projects. In 1962, shortly after the Executive Order of Equal Opportunity in Housing was issued, the General Counsel of what was then the Public Housing Administration ruled that "the mere fact that a project is divided into two or more separate sites in 'white' and 'nonwhite' neighborhoods would not of itself constitute a violation [of the Order], so long as all eligible applicants were given an equal opportunity to choose which site they preferred. . . ." Memorandum from Joseph Burstein, Legal Division, Public Housing Administration, to Walter A. Simon, Director, Philadelphia Regional Office re: "Executive Order 11063, Equal Opportunity in Housing, relationship of Public Housing Administration contractual requirement to site selection," Dec. 21, 1962. In 1965, following enactment of the 1964 Civil Rights Act, the PHA manual was revised to contain the following provision: "The aim of a local authority in carrying out its responsibility for site selection should be to select from among otherwise available and suitable sites those which will afford the greatest *acceptability* to eligible applicants regardless of race, color, religion, or national origin." *PHA Low-Rent Housing Manual*, sec. 205, 1, p. 7 (1965) [emphasis added]. In response to a complaint that proposed public housing projects in Chicago were being located in the Negro ghetto, the then Public Housing Commissioner explained that most Negroes on the waiting list indicated a preference for living in that area. The Commissioner concluded "the acceptability of . . . locations to eligible applicants is clearly demonstrated by the applicant's own designations of locations in which they prefer to live." Letter from Marie C. McGuire, Commissioner of Public Housing, to the Reverend S. Jerome Hall, Oct. 14, 1965; made available to the Commission by Joseph Burstein, General Counsel, Public Housing Administration, on Nov. 15, 1965, with a covering memorandum indicating that the Commissioner's letter embodies Mr. Burstein's legal opinion on the meaning of sec. 205.1(g) of the *Low-Rent Public Housing Manual*.

[68] The projects are Ridge Point and Navy Point (war housing, 1,316 units, 71 percent Negro), Hunter's View (349 units, 90 percent Negro), Hunter's Point (317 units, 94 percent Negro), Hunter's Point Addition (100 units, 93 percent Negro), and Harbor Slope (226 units, 90 percent Negro). The schools are Hunter's Point Elementary School No. 1 (94 percent Negro), Hunter's Point Elementary School No. 2 (95 percent Negro), Sir Francis Drake Elementary School (94 percent Negro), and Jedediah Smith and Annex (90 percent Negro). Project information from lists received from SFHA and HAA June 30, 1966. See also interviews with Evan Lane, Director, SFHA, on Sept. 22, 1966, and with Dr. Harold Spears, Superintendent of Schools of San Francisco, Sept. 21, 1966.

The most extreme example, perhaps, is Robert Taylor Homes, a project in Chicago. Opened in 1961–62, it contains 4,415 units, 75 percent of them designed for large families. Of the 28,000 tenants, some 20,000 are children.[70] The entire occupancy is Negro and schools were built in the area to serve the project alone. Indeed, classes for lower grades are conducted in project units, by agreement between the school board and the housing authority, as a way to relieve overcrowding in the nearby schools.[71]

The self-reinforcing nature of residential segregation is an additional factor. Along with the actions of the housing industry and Government, individual choice undoubtedly contributes to the creation and maintenance of residential segregation. The importance of such choice is hard to assess because the housing market has not been open, and housing choice has not been free. Nonetheless, established residential patterns are difficult to reverse. Many Negroes and whites have become accustomed to prevailing residential patterns. If the housing market were open so that housing choice could be exercised freely, there is some question whether there would be immediate significant changes in racial patterns of residence.

Nonpublic Schools

Private and parochial school enrollment also is an important factor in the increasing concentration of Negroes in city school systems. Nonpublic school enrollment constitutes a major segment of the Nation's elementary and secondary school population. Nationally, about one-sixth of the total 1960 school enrollment (Grades 1 to 12) was in private schools.[72] In metropolitan areas the proportion is slightly higher, and divided unevenly between city and suburb.[73] Nearly one-third more elementary school students in the cities attend nonpublic schools than in the suburbs.[74] Almost all of them are white.[75] In the larger metropolitan areas the trend is even more pronounced. As Table 8 shows, a much higher proportion of white city students than white suburban students attend private and parochial elementary schools. Nonwhites in these metropolitan areas, whether in cities or suburbs, attend public schools almost exclusively.

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[69] For information on Laurel Homes and Lincoln Court, see HUD, *Low-Rent Project Directory*, Dec. 31, 1965. The racial composition of the schools serving these projects, was obtained in interviews with Robert Curry, Assistant Superintendent of Schools in Cincinnati; Joseph Beckman, Assistant Superintendent for School Building and Planning, and other Cincinnati school officials, Aug. 31, 1966, and interviews with John Allen, Director, and Ronald Smith, Relocation Officer, Cincinnati Department of Urban Development, Aug. 26, 1966.

[70] Chicago Housing Authority, *Annual Statistical Report*, Dec. 1965.

[71] Interview with Alex Rose, executive director, Chicago Housing Authority, Sept. 13, 1966.

[72] U.S. Bureau of the Census, *1960 Census of Population, School Enrollment*, Table A–1, at 129 (1964).

[73] U.S. Bureau of the Census, *1960 Census of Population: U.S. Summary*, PB(1)–1C, Table 101, at 1–239 (1964).

TABLE 8.—*Proportion of total elementary students, by race, in public and nonpublic schools, for 15 large metropolitan areas, 1960*

	Central cities		Suburbs	
	White	Nonwhite	White	Nonwhite
Public	61	94	75	97
Nonpublic	39	6	24	3

Source: Taeuber, *Tables on School Enrollment in Selected Metropolitan Areas*, prepared for the Commission

Thus nonpublic schools absorb a disproportionately large segment of white school-age population in central cities, particularly in the larger ones. This poses serious problems for city school systems. In St. Louis, for example, 40 percent of the total white elementary school population attended nonpublic schools in 1965; in Boston, 41 percent; in Philadelphia, more than 60 percent.[76]

Educational Policies and Practices

Although residential patterns and nonpublic school enrollment in the Nation's cities are key factors underlying racial concentrations in city schools, the policies and practices of school systems also have an impact. These policies and practices are seldom neutral in effect. They either reduce or reinforce racial concentrations in the schools.

Underlying all policy and practice is the method that the school system uses in determining which children particular schools shall serve. While there are exceptions and variations, the method most commonly used in city school systems is that of geographical attendance zoning.

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[74] *Ibid.*

[75] See note 50 *supra.*

[76] For data on St. Louis parochial and public schools, see Semmell, *Report on and Investigation of Racial Isolation in St. Louis Public Elementary and Secondary Schools*, App., Tables P-1, P-2, P-11, P-13, P-14 (1966), prepared for the U.S. Commission on Civil Rights—hereinafter cited as *St. Louis Study*. Data on private secular schools not included. Boston College, *Race and Education in Boston*, prepared for the U.S. Commission on Civil Rights—hereinafter cited as *Boston Study*. For data on Philadelphia parochial schools, see University of Pennsylvania, *Philadelphia School Study: Racial Isolation, Achievement and Post-School Performance* App., Table 36 (1966) prepared for the U.S. Commission on Civil Rights—hereinafter cited as *Philadelphia Study*. For data on Philadelphia public school enrollment, see School District of Philadelphia, *A Statistical Study of the Distribution of Negro Pupils in the Philadelphia Public Schools*, Jan. 3, 1966.

The Development of Northern Attendance Patterns

America's schools exhibit a variety of attendance patterns. In most rural and many suburban areas, students attend school some distance from their homes. During the last three decades there has been a transformation of rural and suburban education, with large consolidated school districts and centralized schools replacing smaller districts and schools.[77] In some cases students are transported considerable distances to school. Indeed, more than one-third (15.5 million) of the Nation's public school children rode buses to school during the 1963–64 school year.[78]

The reverse of this pattern has occurred in most of the Nation's cities. As population densities have increased, urban school attendance areas have shrunk. During the earlier part of this century the attendance areas of city schools often encompassed much more territory and served a more diversified student population than at present. As one prominent educator has pointed out:

> Most men and women over 40 recall a childhood schooling in which the sons and daughters of millowners, shop proprietors, professional men, and day laborers attended side by side. School boundaries, reaching out into fields and hills to embrace the pupil population, transcended such socio-economic clusterings as existed.[79]

For example, in Cleveland, Ohio, in the 1920s, the schools in the central area of the city served a variety of ethnic groups including, but not limited to, Negroes.[80] In recent decades, however, the enrollment in neighborhood schools has become socially and racially more homogeneous.[81] The development of smaller, more rigidly applied geographical attendance areas has paralleled the increase in residential segregation and made racially mixed schools a rarity.

At the same time, the meaning of "neighborhood" has changed. Recent developments in the pattern of urban life—rapid population shifts and the growing distances city residents travel for recreation, business, and shopping—have diffused traditional neighborhood patterns. Traditional neighborhoods—self-contained, cohesive communities—do not, in fact, appear to be the basis for neighborhood attendance policy. Instead, the common rationale for neighborhood attendance rests more on convenience. Under State laws, school administrators seek to establish school attendance areas for the greatest convenience of students.[82] Attendance areas commonly are defined, not by the boundaries of communities, but by reference to population density, the size of schools and geographic barriers such as highways and railroads.

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[77] U.S. Office of Education, *Statistical Summary of State School Systems 1963–64*, 4 (1965).

[78] U.S. Office of Education, *Statistics on Pupil Transportation 1963–64* (1965).

[79] *App. D2.2* at 260.

[80] Fierman, *The Negro in Cleveland Education*, June 1941; (unpublished Master's Thesis in the Western Reserve University Library).

[81] See, *e.g.*, Havighurst, "Urban Development and the Educational System," in *Education in Depressed Areas*, 34–36 (Passow ed. 1963).

In almost every city the size of attendance areas has grown smaller during recent years not because of decisions that it is necessary today for children to attend schools closer to their homes than in the past, but rather as a result of increasing population density. Even today, the size of attendance areas varies widely not only among cities, but within the same city. In Oakland, Calif., for example, some elementary school attendance areas are as much as 10 times the size of others.[83]

Nor are attendance areas invariably determined by specific guidelines concerning the optimum size of schools. School size also varies widely within particular cities. In Chicago, for example, elementary schools range in size from 93 to 2,539 students.[84]

Thus school attendance areas are prescribed, not by any rigid formulas, but through the exercise of broad discretion by school authorities who must decide where to locate schools and boundaries. Decisions once made, moreover, must be revised constantly. As the population of a city grows or shifts from one area to another, some schools become overcrowded and others underutilized. School authorities must determine whether they can best relieve overcrowding by building new schools or by redistributing the school population among existing schools. If they elect to build new classrooms, they must decide whether to enlarge existing schools or select new sites. If they decide to redistribute pupils among existing school facilities, they must determine whether to redraw boundaries or make an exception to the policy of géographic assignment—for example, by providing for the transportation of students to schools outside their attendance areas.

Such discretionary decisions of school authorities frequently have the effect either of intensifying or lessening racial segregation in the schools. In a few Northern cities these decisions have been made with the purpose and effect of reducing racial concentrations. Frequently, however, the effect has been to increase segregation. In some cases, the decisions clearly have been made for that very purpose. In others, while purposeful segregation is not apparent, the effect has been the same.[85]

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[82] "The board of education of each city, exempted village, and local school district shall provide for the free education of the youth of school age within the district under its jurisdiction, at such places as will be most convenient for the attendance of the largest number thereof." See, *e.g.*, Ohio Rev. Code, sec. 3313.48 (1960). (See also *Mass. Gen. Laws* ch. 71, sec. 68 (1964))

[83] Dumbarton Research Council, *Race and Education in the City of Oakland*, prepared for the U.S. Commission on Civil Rights, Map 1, p. 22 (1966) (hereinafter cited as *Oakland Study*).

[84] Chicago Public Schools, *Survey of Students*, Oct. 8, 1965. Clark Branch of Key in District No. 4 had 93 pupils, Jenner in District No. 7 had 2,539 in 1965.

Purposeful Segregation

Purposeful segregation by administrative action is not always easy to detect. Nonetheless, such segregation in the form of gerrymandering has been found to have occurred in a few Northern cities, as recent court decisions in New Rochelle, N.Y.,[86] and Hillsboro, Ohio,[87] attest.

These cases appear to be the legacy of an era, only recently ended in some places in the North, when laws and policies explicitly authorized segregation by race. State statutes authorizing separate-but-equal public schools were on the books in Indiana until 1949, in New Mexico and Wyoming until 1954, and in New York until 1938.[88] Other Northern States authorized such segregation after the Civil War and did not repeal their authorizing statutes until early in the 20th century.[89]

In New Jersey, separate schools for Negroes were maintained well into the 20th century despite an 1881 statute prohibiting the exclusion of children from schools on the basis of race.[90] In 1923, the State Commissioner of Education ruled that local school authorities could provide special schools for Negroes in their residential areas, and allow the transfer of white students from these schools to white schools.[91] The ruling was reaffirmed in 1930.[92] As late as 1940, there were at least 70 separate schools for Negroes in New Jersey.[93]

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[85] A number of studies and reports have explored school system practices which have had the effect of reinforcing racial isolation. See *e.g.*, National Association of Intergroup Relations Officials, *Public School Segregation and Integration in the North* (1963); Advisory Panel on Integration of the Public Schools of Chicago, *Report to the Board of Education* (1964); Dodson, *Racial Issues in Public Education in Orange, New Jersey* (1962); Committee on Race and Education, *Race and Equal Educational Opportunity in Portland's Public Schools*, 1964; Citizens Advisory Committee of the Board of Education of Detroit, *Equal Educational Opportunities* (1962).

[86] In New Rochelle, N.Y., gerrymandering of the attendance boundaries for the predominantly Negro Lincoln Elementary School began in 1930. An all-white irregular corridor was carved out of the Lincoln zone and placed in an adjacent all-white zone. In the years that followed, the Negro population expanded and the boundary lines for the Lincoln School were extended to contain the Negro children within the Lincoln zone. In 1961, the courts held this practice to be a violation of the 14th amendment. *Taylor* v. *Board of Education*, 191 F. Supp. 181 (S.D.N.Y.), *aff'd* 294 F. 2d 36 (2d Cir.), *cert. denied*, 368 U.S. 940 (1961).

[87] In Hillsboro, Ohio, separate schools for Negroes and whites had been maintained by school authorities on an informal basis until 1954, even though State law forbade racially separate schools. In 1954, seven Negro children registered in the white elementary schools. The schools were closed for several days and the school board established the city's first geographical attendance areas. When the schools reopened, the seven Negro children had been assigned to the Lincoln Elementary School, which was all-Negro. The attendance zone established for Lincoln consisted of two separate, noncontiguous areas, and the school itself was not located within its own attendance area. Several Negro students had to walk past a white school on their way to Lincoln. Here, too, the courts found this practice to be in violation of the Constitution. *Clemons* v. *Board of Education*, 228 F. 2d 853 (6th Cir.), *cert. denied*, 350 U.S. 1006 (1956). For further discussion, see Legal Appendix *infra* at 219.

[88] Mangum, *The Legal Status of the Negro*, 81 (1940).

[89] Stephenson, *Race Distinctions in American Law*, 77–88 (1910).

[90] Wright, *The Education of Negroes in New Jersey*, 167–168 (1941).

In Illinois, although an 1874 statute prohibited the exclusion of students from schools on the basis of race, at least seven counties maintained separate schools for Negro children as late as 1952 and assigned teachers and principals on a racial basis. The State Superintendent of Education had a Negro assistant whose responsibilities included supervising the State's separate Negro schools.[94] In the 1930's Chicago maintained a high school called "Phillips High School for Negroes." [95]

In Ohio, well into the 1950's, there were cities which maintained separate schools for Negro students.[96] In Cincinnati, between the Reconstruction Era and 1955, the school system operated citywide "voluntary" schools, which in 1950 were attended by about one-third of the Negro elementary students.[97] The teaching staff also was segregated.[98]

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[91] *Id.* at 192. The ruling stated that:

"The board of education has furnished these colored children proper facilities. It has designated the school at which they shall attend and has furnished them with a regularly licensed teacher. It therefore has acted entirely within its lawful duties and has exercised only its just powers. It does not matter that the board has designated the Fairview School as a colored school and has given it such a name. . . . It is no discrimination under the school law for a board of education to make such distribution of the children in the different schools of the school district as in its judgment shall seem best to meet all the requirements of the school laws."

[92] *Ibid.*

[93] *Id.* at v.

[94] Ming, "The Elimination of Segregation in the Public Schools of the North and West," 21 *Journal of Negro Education,* 265 (1952).

[95] Federal Emergency Administration, *P.W.A. Non-Federal Allotments; Educational Institutions for Negroes* at 10 (March, 1939). In the 1965–66 school year, the same school, Phillips High School, was 99.9 percent Negro. *Survey of Students, supra* note 84.

[96] Segregated schools for Negroes in Ohio cities in the 1940's existed in Dayton, Xenia, and Lockland. Xenia's Negro school was maintained by district boundaries which were identical to the boundaries of the Negro area. Negro children living outside that area were advised to attend the Negro school. Jackson, "The Development and Character of Permissive and Partly Segregated Schools," 16 *Journal of Negro Education* 302, 305–307 (1947).

[97] Department of Public Instruction, Cincinnati Public Schools, *History of Negro Education in the Cincinnati Public Schools,* 6–9 (1964); enrollment data for 1950 supplied by the Cincinnati public schools. Administrative practices of purposeful school segregation have also been noted in Chicago, Ill. and Gary, Ind. In Chicago, Ill., the practice of zoning Negro schools on the basis of Negro neighborhoods was carried on into the 1930's and 1940's. For a discussion of practices in Chicago, see Baron, "History of Chicago School Segregation to 1953," *Integrated Education,* Jan. 1963; U.S. Commission on Civil Rights, *Civil Rights U.S.A. Public Schools, Cities in the North and West, 1963—Chicago, 188.* In Gary, Ind., schools in racially integrated areas were segregated by school board policy until 1947 when the school system changed to a policy of geographic zoning. Kaplan, "Segregation Litigation and the Schools—Part III: The Gary Litigation," 59 *N.W.U.L. Rev.* 124, 125 (1963).

[98] *Deal* v. *Cincinnati Board of Education,* 244 F. Supp. 572 (S.D. Ohio 1965), *aff'd.* Civ. No. 16863, 6th Cir. Dec. 6, 1966. "Prior to 1943 the only Negro teachers employed were assigned to the all-Negro voluntary schools." Testimony at U.S. District Court trial, of Superintendent Wendell Pierce, *Deal supra.,* Record p. 142.

In some cases, State courts in the North upheld racially separate school facilities. During the 19th century, courts in Ohio, Delaware, New York, and other States allowed exceptions to geographical attendance for the purpose of maintaining the segregation of Negroes.[99] In 1876, for example, in a suit brought by Negro parents against the Cincinnati Board of Education seeking an order that their children be allowed to attend a white school in their neighborhood, the parents contended that the children had to walk four miles each way to attend a Negro school. The court dismissed this argument, saying:

> [S]omebody must walk farther than the rest. . . . The only inconvenience complained of is taking a long walk, which is not longer than children must take to go to other schools, such as high schools, and less than some must take to go to the university.[100]

Practices Bearing on School Attendance

Although purposeful school segregation resulting from legal compulsion or administrative action is not often found now in the North, apparently neutral decisions by school officials frequently have had the effect of reinforcing the racial separation of students, even where alternatives were available which would not have had that result.

School Construction

Of the areas of decision-making which can affect racial isolation, determinations concerning construction of new school facilities are perhaps the most important. Decisions made about location and size of schools can determine attendance patterns for long periods of time. As Table 9 shows, the overwhelming majority of elementary schools built in 17

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[99] States which had laws in the 19th century which either authorized separate public education for Negroes or permitted segregated schools included: Ohio (47 Ohio Laws 1849 sec. 1 at 7), Pennsylvania (Pa. Laws 1854, No. 610 ch. 6 sec. 24 at 623), Indiana (Ind. Laws, Spec. Sess. 1869, ch. 6 sec. 3 at 41), California (Calif. Laws 186, sec. 1 at 325), Iowa (Iowa Laws 1858 ch. 52 sec. 30 at 51), New York (2 N.Y. Laws ch. 556 sec. 28 at 1288).

Each of these statutes was subsequently repealed. Ohio (94 Ohio Laws 1887 No. 71), Pennsylvania (Pa. Laws 1881 No. 83 sec. 2), Indiana (Ind. Laws 1949 ch. 186 sec. 10), California (Amendments to the Code of California of 1880, ch. 44 sec. 62), Iowa (Rev. Stat. Iowa 1860, ch. 8 sec. 2023–2024), New York (2 N.Y. Laws 1900 ch. 492 sec. 2).

States which had, prior to the *School Segregation Cases*, permitted segregation on an optional basis but whose statutes have been repealed or locally ruled invalid include: Kansas, Arizona, New Mexico, Wyoming. See Greenberg, *Race Relations and America Law* 245–246 (1959).

[100] *State of Ohio ex. rel. Lewis* v. *Board of Education of Cincinnati*, 7 Ohio Dec. Repr. 129, 130 (1876).

Northern and Western cities in the last decade and a half had either nearly all-Negro or nearly all-white enrollments when they opened.[101]

TABLE 9.—*The number and percentage of elementary schools constructed in 16 cities which opened (1950–65) 50 percent or more Negro, 90 percent or more Negro, and 90 percent or more white.*

Number of cities	Number of elementary schools	Number and percent which opened 50 percent or more Negro	Number and percent which opened 90 percent or more Negro	Number and percent which opened 90 percent or more white	Number and percent which opened nearly all-Negro or nearly all-white (sum of columns 4 and 5)
16	371	67 (18.0)	48 (12.9)	264 (71.2)	312 (84.1)

Alternative solutions are not always readily available within the framework of geographical zoning, but neither are they always absent. The pattern of residential segregation varies from city to city. In some cities, Negroes are concentrated in one residential area, and in others, in a number of smaller areas. Each situation affords its own possibilities or limitations for school desegregation. Often the decisions school administrators must make when additional school facilities are needed can have a substantial effect. The selection of a site for a new school, the determination of its size and attendance area, and decisions on whether to build a new school or adopt some other alternative, such as enlarging an older school, help determine the racial composition of schools.

Site Selection and School Size.—Actions of school officials in Oakland, Calif., show how selection of a site for a new school can have the effect of limiting racial desegregation of students. The opening of Skyline High School created a new senior high attendance district that removed white high school students from a racially mixed to an all-white school. Skyline High was situated in a white residential area in the Oakland hills and it withdrew white students from four other senior highs.[102] Sky-

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[101] Information on school construction and racial composition of new schools when opened was furnished to the Commission by the school systems of the following cities: Pasadena, Sacramento, Oakland, Fort Wayne, Des Moines, Boston, Flint, Omaha, Columbus, Cincinnati, Cleveland, Portland (Oreg.), Philadelphia, Pittsburgh, Salt Lake City, and Milwaukee. Information on Omaha is only partial. (Data in Commission files.)

[102] *Oakland Study* at 37. The table below gives the racial composition of high schools affected by the opening of Skyline. *Oakland Study* at 38.

School	Percent Negro [illegible]	Percent Negro [illegible]	Percent Negro [illegible]
Skyline	(*)	[illegible]	[illegible]
Oakland High	[illegible]	[illegible]	[illegible]
Oakland Tech	[illegible]	[illegible]	[illegible]
Castlemont	[illegible]	[illegible]	[illegible]
Fremont	[illegible]	[illegible]	[illegible]

*Not opened.

line, which opened in 1961, was 99 percent white the following year.[103] The new school was so situated as to make it extremely difficult to draw boundaries that would include a substantial number of Negroes in the student body.[104]

Two examples from San Francisco illustrate the combined effect of site selection and school size on the racial composition of the schools. During the 1950's, capacity for approximately 2,400 elementary children was added to the predominantly Negro schools in the Hunter's Point area. As a result, three of the Hunter's Point schools were enlarged to a capacity of about 1,000 pupils each. At the same time a new elementary school—Fremont—was constructed within an adjacent white area. But the school provided space for only 450 pupils. Given its location and small size, Fremont could not accommodate the Hunter's Point children. The school opened with a nearly all-white student body.[105]

A similar case involved the construction of the Anza Elementary School which opened in 1952.[106] Anza was built in a white area about eight blocks from the predominantly Negro Golden Gate Elementary School in the Fillmore area, a Negro residential neighborhood.[107] At the time Anza was planned, Golden Gate was overcrowded and some of its students were being bused 15 blocks to the Pacific Heights school.[108] But Anza was planned to accommodate only 540 students and opened as a nearly all-white school.[109] Children from nearby Golden Gate continued to be bused to Pacific Heights.[110]

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[103] *Ibid.* Racial enrollment statistics are unavailable for the 1961–62 school year.

[104] U.S. Commission on Civil Rights, *Civil Rights U.S.A. Public Schools, Cities in the North and West, 1963, Oakland* 12. "It (the Skyline site) also presented some major disadvantages. It was not centrally located; public transportation was not available . . . and a major portion of the site was outside the city limits so that annexation would be necessary." Previously, the school administration had considered boundaries for a new high school which "would have resulted in a better socio-economic (and perhaps racial) mix at the new high school because of the more westerly boundary contemplated." (*Id.* at 11.)

[105] San Francisco Unified School District, *Statistical Report of San Francisco Public Schools, 1961–62*, 20–26 (school construction data); memorandum, *Total Classroom Capacities*, prepared for Frederick T. Cioffi, U.S. Office of Education (USOE) by Dr. William A. Cobb, Assistant Superintendent, San Francisco Unified School District, Jan. 19, 1966; San Francisco Unified School District, *Building Utilization—San Francisco Elementary Schools*, Sept. 19, 1963 (capacity data). All racial data, 1950–61, based on estimates obtained in staff interviews with Mr. and Mrs. Cecil Poole; Dr. Ruth Howard, Chairman, Language Department, Lowell High School; Edward Howden, Executive Director, California FEPC; Seaton Manning, former Executive Director, San Francisco Urban League; Dr. Hilda Taba, San Francisco State College; Josephine Cole, teacher, San Francisco Unified School District (SFUSD); and Rev. Alfred Dale; August 1966. Dr. Mary McCarthy of the School Department also confirmed that Fremont opened nearly all-white. Fremont School later became majority-Negro. The present boundary between Fremont and Burnett (a Negro school on Hunter's Point) is Third Street, a major thoroughfare. It is crossed in the adjacent Bayview district. There is no other barrier between Fremont and Hunter's Point. (Staff interview with Reginald Major, former education director, San Francisco NAACP, Nov. 15, 1966.)

[106] School construction data obtained from SFUSD, *Statistical Report on the San Francisco Public Schools, 1961–62*, 20 (1962).

[107] SFUSD, *op. cit. supra* note 106 (location). Interview with Mr. and Mrs. Cecil Poole, *et al.*, *op. cit. supra* note 105 (racial data).

Boundaries.—Often there is a close relationship between the selection of a school's site, the determination of its size, and the creation of its attendance areas. In some cases, even where the school is so located and of such a size that it otherwise might draw a mixed student population, school authorities have drawn attendance area boundaries which have the effect of perpetuating racial separation. Examples from Chicago, Ill., and Cincinnati, Ohio, illustrate the point.

On the west side of Chicago, a new elementary school—Paderewski—opened in 1964. Some of the Negro children in Grades K–6 assigned to Paderewski formerly had attended the nearby Burns Elementary School which had been 60 percent Negro the year before. As Illustration 1 shows, because the new boundaries selected for Paderewski included almost all the Negro elementary school children who previously had attended Burns, the elementary grades at Burns became nearly all-white. Paderewski opened 98 percent Negro.[111] The purpose of the

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[108] SFUSD, *Transportation Report,* memorandum to Assistant Superintendent William Cobb from E. Lahl, Supervisor, Division of Supplies, Nov. 1, 1965 (hereinafter called *Transportation Memo*) and telephone interview with Dr. Cobb, October 1966.

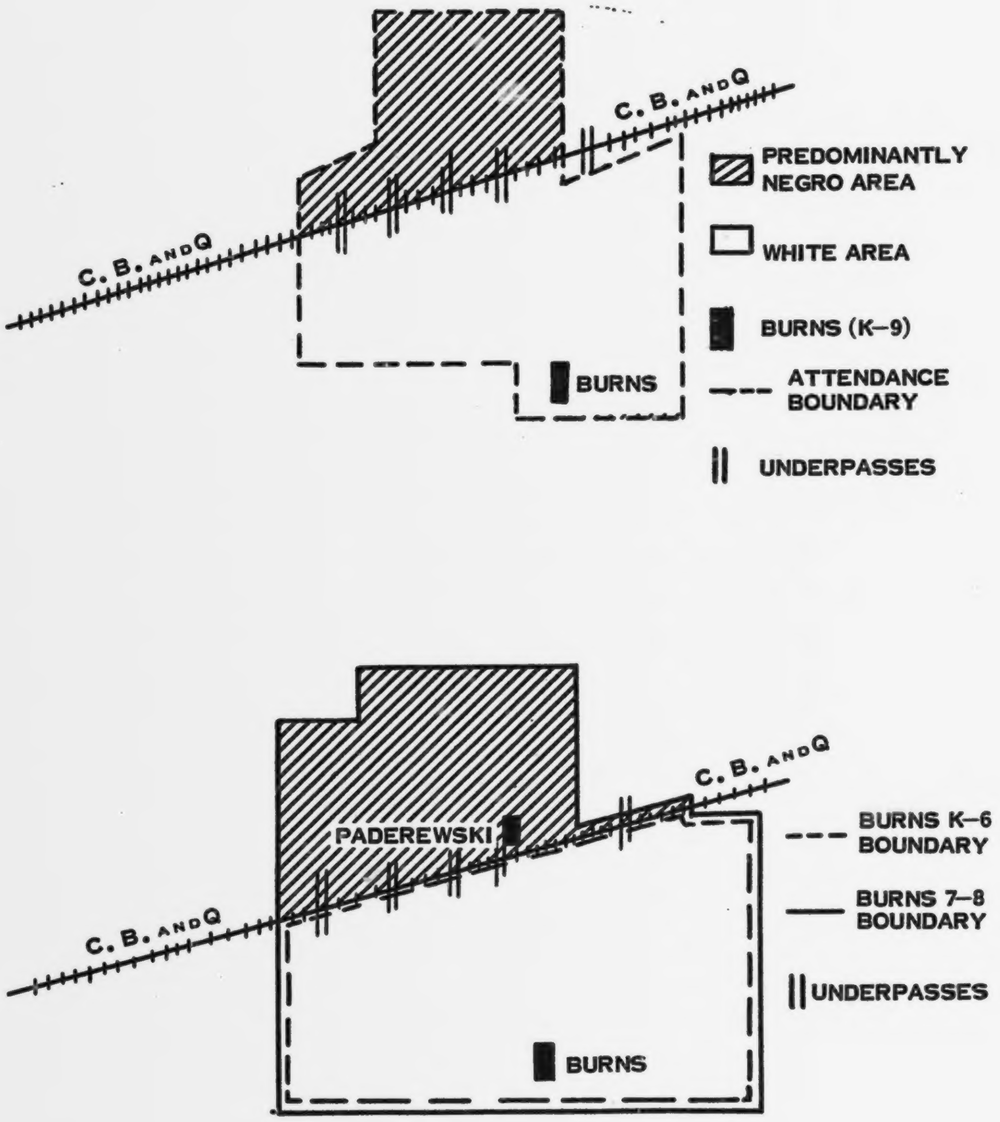
[109] Anza opened in 1952 at 90 percent of capacity with room for 56 more children. (SFUSD, *Active Enrollment* Oct. 31, 1952; see also Letter from Assistant Superintendent William Cobb, Sept. 27, 1966 [capacity].) By 1954, its enrollment had reached 526. (*Active Enrollment supra,* Oct. 29, 1954.) The school was a replacement for the old Fremont School. (SFUSD, letter from Assistant Superintendent William Cobb, Aug. 16, 1966.) It was moved to a new location farther from Golden Gate and more suitable to middle-income white housing. (Staff interview with Mrs. Poole, *et. al., op. cit. supra* note 105). The school system contends that Anza was planned as an integrated school. However, according to Dr. Cobb, when Anza opened there were few Negroes enrolled. (Telephone interview, Nov. 1966.) Negroes began moving into the area during the late 1950's. By 1962, Anza was 76 percent Negro. (Memorandum from George Boisson to Dr. Harold Spears concerning racial composition of schools, Jan. 22, 1963.) During its transition from a nearly all-white to majority-Negro school, Anza served as a model of an integrated school. (Information obtained in staff review with Reginald Major, former education director, San Francisco Branch, NAACP, Nov. 1966.) However, the fact that Anza was placed farther from Golden Gate than the school it replaced, the fact that there is no barrier between the two districts (the present boundary is Divisadero which is crossed in the adjacent Emerson district), and the fact that the overflow from Golden Gate was not accommodated at the new school, suggest that the school was originally planned to serve the white community.

[110] *Transportation Memo.*

[111] Attendance boundaries of Burns before and after the opening of Paderewski come from *Proceedings of the Board of Education of the City of Chicago,* Sept. 27, 1961 at 469; Nov. 13, 1963, at 666. Data on the racial composition of schools come from the Chicago Public Schools, *Student Survey* (1963, 1964). The racial composition of Burns (K–8) in 1964 was 59 percent white, 19 percent Negro, and 21 percent other. Although Burns was 19 percent Negro in the 1964–65 school year, its Negro

Footnote continued on following page.

Illustration 1. Burns Elementary School Boundary Before (Top) and After (Bottom) Opening of Paderewski Elementry School in Chicago, Ill.


C. B. AND Q
C. B. AND Q
▨ PREDOMINANTLY NEGRO AREA
☐ WHITE AREA
BURNS (K–9)
BURNS
ATTENDANCE BOUNDARY
UNDERPASSES
C. B. AND Q
C. B. AND Q
PADEREWSKI
BURNS
BURNS K–6 BOUNDARY
BURNS 7–8 BOUNDARY
UNDERPASSES

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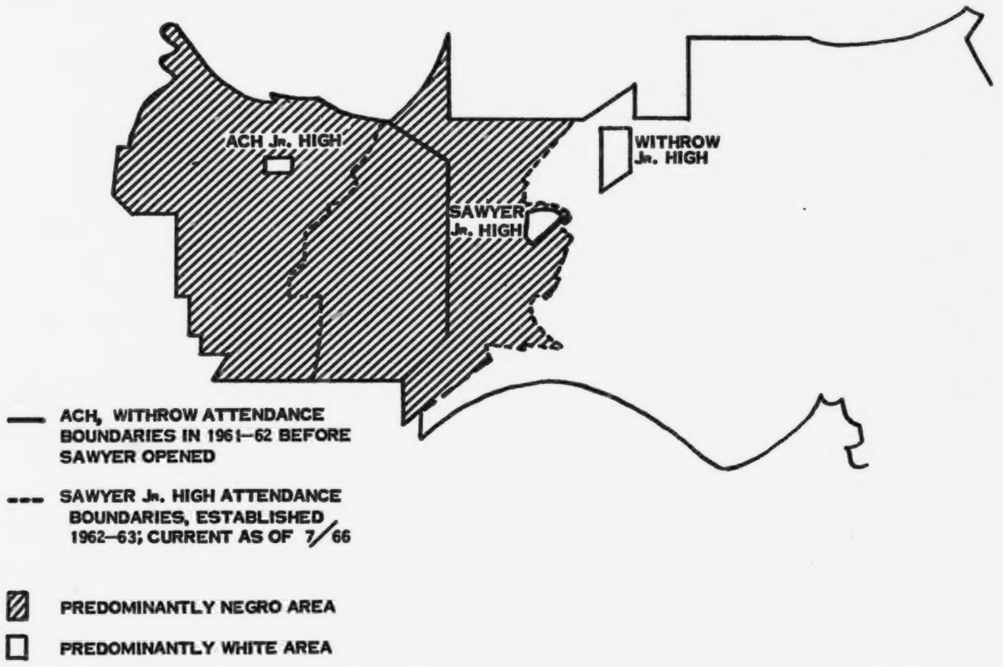
students were virtually all in the seventh and eighth grades, while Grades K–6 were nearly all-white. That the elementary grades were nearly all-white is derived from the location of the attendance boundaries for Grades K–6 and Grades 7 to 8. The attendance area for Grades K–6 encompasses a white residential area south of the C.B. & Q. railroad tracks. The attendance area for Grades 7 and 8 incorporates the same area as the boundaries for K–6 plus an additional area north of the railroad tracks, an area which is nearly all-Negro. (School boundaries for 1965–66 and racial composition of census blocks for each year since 1960 were obtained from a map prepared by the U.S. Office of Education, from data obtained from the Chicago Public Schools.) The railroad tracks, which are the common boundary between Burns and Paderewski, are not impassable to elementary children. Children crossed these tracks before 1964 to attend Burns and crossed them in 1965–66 in other attendance areas on the West Side. There are numerous underpasses in the area [U.S. Department of the Interior, Englewood Quadrangle, Illinois, Cook County 7.5-minute series (topographic map)].

new construction and of the boundary change was to relieve overcrowding at Burns and other schools in the area. When Paderewski opened, it was more severely overcrowded than Burns had been the previous year.[112]

In Cincinnati, Ohio, a new junior high school—Sawyer—was opened in 1962, to relieve overcrowded conditions at two other junior high schools—Ach and Withrow—in the city's western area.[113] As Illustration 2 shows, the new school was located between Ach (92 percent Negro) and Withrow (58 percent white).[114] The boundary lines of the

ILLUSTRATION 2. CINCINNATI: ACH-SAWYER-WITHROW BOUNDARY CHANGE


ACH Jr. HIGH
WITHROW Jr. HIGH
SAWYER Jr. HIGH
ACH, WITHROW ATTENDANCE BOUNDARIES IN 1961–62 BEFORE SAWYER OPENED
SAWYER Jr. HIGH ATTENDANCE BOUNDARIES, ESTABLISHED 1962–63; CURRENT AS OF 7/66
PREDOMINANTLY NEGRO AREA
PREDOMINANTLY WHITE AREA

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[112] According to the report of the General Superintendent to the Board of Education, the opening of Paderewski would relieve overcrowding at Burns and six other elementary schools on the West Side. (Chicago Public Schools *Proceedings of the Board of Education* 666, Nov. 13, 1963.) However, Burns in 1963 had an average of 32.1 students per classroom in Grades 1 to 8. In 1964, Burns had an average of 32.6 students per classroom in Grades 1 to 8 and Paderewski opened with 36.2 students per classroom in Grades 1 to 6. (Chicago Public Schools, *Use of Facilities, Elementary School Buildings,* Sept. 27, 1963, and Oct. 2, 1964.)

[113] Joint exhibit No. 17, *Deal* v. *Cincinnati Board of Education, supra* note 98. Ach (92 percent Negro in 1960) was at 112 percent of capacity, Withrow (42 percent Negro in 1960) was at 97 percent of capacity. Division of Research, Statistics, and Information, Cincinnati Public Schools, *Memberships, Percent and Number of Negro Pupils by Schools, 1960–61, 1963–64, 1964–65, and 1965–66,* Jan. 11, 1966. Capacity and enrollment data for each year since 1950–51 furnished to the Commission by the Department of Research, Cincinnati Public Schools.)

[114] Joint exhibit No. 272, *Deal* v. *Cincinnati Board of Education, supra* note 98 (map showing attendance boundaries of existing secondary schools.) Cincinnati Public Schools, *op. cit. supra* note 113 (racial composition of schools).

new school's attendance area were drawn to include part of the area formerly zoned to Ach (92 percent Negro) and almost the entire Negro residential area formerly zoned to Withrow (58 percent white). The following year Ach was 99 percent Negro; Withrow was 83 percent white; and Sawyer was 98 percent Negro.[115]

Alternatives to New School Construction

As noted earlier, new schools often are built in response to rapidly rising school enrollments. As an alternative to constructing new schools, urban school systems sometimes use temporary space or enlarge existing facilities to accommodate enrollment increases. In a number of cases these expedients also have had the effect of heightening racial concentrations. Examples from Oakland, Calif., and Milwaukee, Wis., illustrate the point.

In Oakland, increases in elementary school enrollment in predominantly Negro areas of the city have been absorbed through the use of "portable" classrooms.[116] In north Oakland, population movements resulted in a net increase of more than 2,000 Negro children and a decrease of 742 white children between 1950 and 1965.[117] Additional space, including 28 "portables," was furnished at three schools in that area. There was no other construction or any boundary changes during the decade of the 1950's. The same procedure was followed in east Oakland, where the number of Negro children in 16 years increased from 273 to more than 5,500, and the number of portables in use at elementary schools also increased substantially.[118] Between 1953 and 1963, nine new elementary schools were opened in the city. Of these, three were in Negro areas and consisted entirely of portable units. The remaining six were in the virtually all-white Hill area, and of these, four were permanent facilities and two were partly portable.[119] The entire increase in Oakland's Negro elementary enrollment over recent years has been absorbed in schools that are now 90 percent to 100 percent Negro.[120]

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[115] Plaintiffs' exhibit No. 17, *Deal* v. *Cincinnati Board of Education, supra* note 98 (map showing the boundaries of Ach and Withrow in 1961–62 prior to the opening of Sawyer, the attendance boundaries drawn for the new Sawyer School in 1962–63 which are still current, and the location of predominantly Negro and predominantly white areas).

The location of Sawyer Junior High School did not make its 98 percent Negro enrollment inevitable. Sawyer is on the edge of a large Negro residential area and is quite close to a predominantly white residential area. The former Cincinnati superintendent acknowledged in his testimony in *Deal,* that he lived in the predominantly white neighborhood close to Sawyer and that children in his neighborhood lived closer to Sawyer but attended Withrow Junior High School. The superintendent also acknowleged that there was no physical obstruction or hazard which would prevent people living in his block from attending Sawyer. (See testimony of former Superintendent Wendell Pierce, Record, p. 216, *Deal* v. *Cincinnati Board of Education, supra* note 98.) Sawyer is not located in the center of its attendance area; it is located on the extreme eastern edge of its attendance boundary. (Joint exhibit No. 272, *Deal* v. *Cincinnati Board of Education, supra* note 98.) The school's location, then, could have taken advantage of both Negro and white neighborhoods in close proximity to one another. There are no official racial enrollment statistics for the year Sawyer opened. However, the next year Sawyer was 98 percent Negro.

[116] *Oakland Study* at 51. "Of all the portables in use in the school year 1965–66 at the elementary level, almost one-third (32 percent) were located at schools which had more than 90 percent Negro enrollment. . . . There has been an overall increase in the use of portables in the whole school system in the last 10 years, but this increase has been felt most strongly at schools with high Negro enrollments. Elementary schools with over 90 percent Negro enrollment showed a 75 percent increase in the use of portables between 1956 and 1966. . . ."

[117] *Id.* at 28.

In Milwaukee, Wis., additional school space for Negro children in the predominantly Negro central area almost invariably has been provided through additions to existing schools.[121] The effect has been to confine Negro school children to schools in Negro neighborhoods. The schools serving the central area are densely concentrated. The situation was well summarized in a report of the city school administration:

> It is evident that elementary schools must be located closer together in an area of high pupil population concentration. In the central [Negro] area, 25 schools serve districts totaling about seven square miles; this averages about three and one-half schools per square mile. In the remainder of the city, 92 schools serve 88.75 square miles of this area; this averages a little more than one school per square mile.[122]

One Milwaukee school official has stated that had the board of education considered greater racial desegregation desirable, boundary changes could have been made that would have enabled thousands of Negro and white children to attend school with each other, without conflicting with the school board's policy of neighborhood school attendance.[123]

Exceptions to Neighborhood Attendance

As pointed out earlier, neighborhood attendance zones are not always applied with rigid consistency, but vary from time to time and from place to place. Sometimes neighborhood attendance is subordinated to other educational goals. In most cities, for example, handicapped children or academically talented students do not attend their neighborhood school.[124] There are other departures from neighborhood attendance policy that potentially can either reduce or reinforce racial separation in schools. Chief among these are optional zones, transfer plans, and transportation.

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[118] *Id.* at 20, Table 12; 28. The number of portable units at east Oakland elementary schools increased from 74 to 129 in the period 1955–65. By 1965 there were twice as many portables in east Oakland as there were in any other section of the city. (*Id.* at 47, Table 19.)

[119] *Id.* at 53, Table 20.

[120] See *App. A,* Table 3.

[121] Milwaukee Public Schools, *Report of School District Changes in Central Area of Milwaukee, 1943–1953–1963* 85 (1964) (additions to schools); Milwaukee Public Schools, *Report on Visual Count of White and Nonwhite Pupils by Schools,* Apr. 11, 1966 (racial composition of schools). Of the 44 new schools constructed between 1950 and 1965, only 2 were in areas where Negro enrollment was over 50 percent. (Milwaukee Public Schools, *Fifteen Fine Years of School Construction Progress, 1950–1965.* See also *Visual Count* and *Report of School District Changes, supra.*)

[122] Milwaukee Public Schools, *Report of School District Changes in Central Area of Milwaukee, 1943–1953–1963,* 83 (1964).

[123] Interview with Arthur H. Kastner, director of the Department of School Housing Research, Milwaukee Public Schools, September 1966.

Optional Zones.—An optional zone is a limited area established within a wider school attendance area. Students living in an optional zone are permitted a choice between the school located in their attendance area and a school in a nearby attendance area. Examples of the use of optional zones in Cleveland and San Francisco illustrate the way this practice often perpetuates racial separation in the schools.

In 1951, Cleveland school authorities created an optional zone within the attendance area of the Washington Irving Elementary School, a 98 percent Negro school.[125] The optional zone was a white residential enclave in the otherwise Negro area.[126] It gave the white children, who otherwise would have been assigned to Washington Irving, the option of attending the nearby Woodland School, which was 96 percent white.

Both the Woodland and the Washington Irving Elementary School attendance zones had been included in the attendance zone of Rawlings Junior High School, which had become majority-Negro. The school authorities again created an optional zone consisting of the entire (nearly all-white) Woodland district and the white enclave in the Washington Irving district. Here, too, the optional zone enabled white children to choose between the majority-Negro junior high school to which they otherwise would have been assigned and a nearby junior high school—Audubon—which was 85 percent white.[127]

In San Francisco an optional zone existed during the late 1940's and 1950's within the areas served by the majority-white Geary Elementary

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[124] Massachusetts State Board of Education, *Because It Is Right—Educationally,* (report of the Advisory Committee on Racial Imbalance and Education) 5 (April 1965); U.S. Commission on Civil Rights, *Staff Report on Issues Related to Racial Imbalance in the Public Schools of Rochester and Syracuse, New York,* 6 (1966) (Rochester); U.S. Commission on Civil Rights, "Staff Report on Education," *Cleveland Hearing* 750.

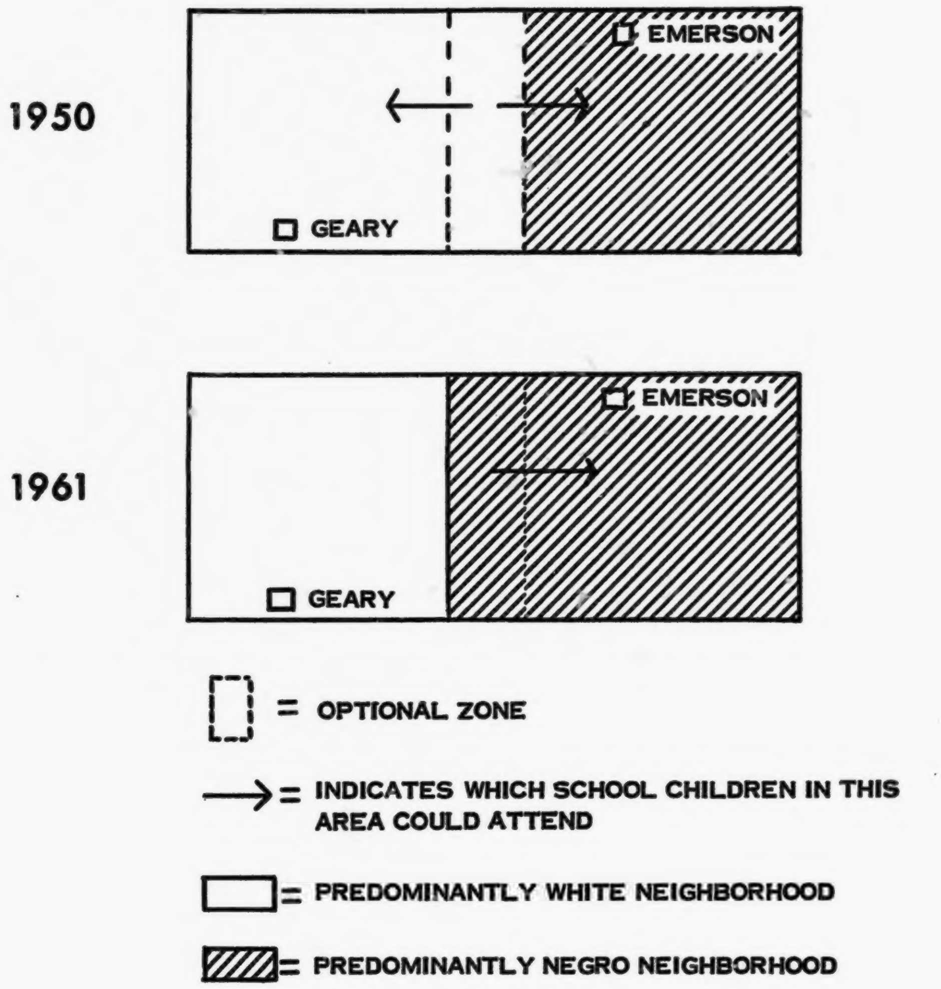
[125] Official school district boundary cards, Cleveland Public Schools. Racial composition of Cleveland Public Schools in Commission files. The small area between the Washington Irving and Woodland Elementary Districts was made optional on Apr. 17, 1952, effective Sept. 1, 1952.

[126] The area in question was in census tract N-4 and had 271 white households and 15 nonwhite households. U.S. Bureau of Census, *U.S. Census of Housing, 1950,* vol. 5, part 38 at 42.

[127] Official school district boundary cards, *supra,* note 125. Racial composition of Cleveland public schools in Commission files. The optional zone was created in January 1952.

School and the majority-Negro Emerson School.[128] In 1950, the zone was predominantly white.[129] As Illustration 3 shows, by 1960, however, the great majority of the zone's residents were Negroes.[130] By then, the principal effect of the zone was to enable Negro children to attend the majority-white Geary School. The option was removed in 1961, and the zone included in the attendance area of the majority-Negro Emerson

Illustration 3. Geary-Emerson Optional Zone, San Francisco


1950
EMERSON
GEARY
1961
EMERSON
GEARY
= OPTIONAL ZONE
= INDICATES WHICH SCHOOL CHILDREN IN THIS AREA COULD ATTEND
= PREDOMINANTLY WHITE NEIGHBORHOOD
= PREDOMINANTLY NEGRO NEIGHBORHOOD

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[128] Memorandum to Frederick Cioffi, USOE, from Tennessee Kent, Assistant Superintendent of elementary schools, Jan. 7, 1966, and accompanying maps. Telephone interview with Dr. William Cobb, Assistant Superintendent, Nov. 4, 1966.

[129] U.S. Bureau of Census, *U.S. Census of Housing,* 1950, vol. V, part 172.

[130] U.S. Bureau of Census, *U.S. Census of Housing,* 1960, HC(3) (No. 67).

School even though Emerson opened that year slightly over capacity, while Geary (still majority-white) opened slightly under capacity.[131]

Reports from other cities—among them Springfield, Mass.; Philadelphia, Pa.; Indianapolis, Ind.; and Buffalo, N.Y.—indicate similar practices with similar consequences.[132]

Transfers.—School systems use various means to relieve overcrowding. The provision of additional school space, whether through construction of new schools or additions to existing schools, is one common method. As shown above, this often has the effect of intensifying or perpetuating school segregation. Another method used is that of transfer plans. Generally under these plans, students are permitted to attend any school in which there is available space, without regard to geographical zones. Restrictions may be imposed so that students may transfer only from schools that are overcrowded and only to schools that are underutilized. Theoretically these plans can serve to reduce racial concentrations by permitting children to transfer from racially isolated schools. In practice they seldom have this effect.

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[131] SFUSD, *Building Utilization—San Francisco Elementary Schools* (capacity and enrollment data for 1959–65). Emerson was at 102 percent of capacity while Geary was at 91 percent of capacity. Interview with Mr. and Mrs. Poole, *et al., op. cit. supra* note 105 (racial composition of Emerson); information obtained from Dr. William Cobb, Assistant Superintendent, Dec. 1, 1966 (racial composition of Emerson); information obtained from Dr. William Cobb, Assistant Superintendent, Dec. 1, 1966 (racial composition of Geary); memo from Tennessee Kent, Assistant Superintendent of Elementary Schools, to Frederick Cioffi, USOE, Jan. 7, 1966 (abolition of option).

[132] The optional areas in Springfield, Mass., were abolished in 1965. (Springfield Public Schools, *Revised Springfield Plan for the Promotion of Racial Balance and the Correction of Existing Racial Imbalance in the Public Schools,* 3 (Apr. 1, 1966, effective Sept. 1, 1966). These optional areas existed mainly in white neighborhoods and afforded those children a choice of schools, while no such options existed for children living in Negro neighborhoods. (Springfield Public Schools, "Map of Optional Areas, 1963–64 School District Boundaries and 1966–67 School District Boundaries"; plaintiff's exhibit No. 22; plaintiff's exhibit No. 4, which records the names, addresses, grades, and race of children living in optional zones and the schools they attend for the 1963–64 school year, *Barksdale* v. *Springfield School Committee,* 237 F. Supp. 43 (D. Mass. 1965).)

In Philadelphia, the eastern portion of the 94 percent Negro Pennell School District contained an optional zone in 1961. Sixty-eight white children living in that optional zone were able to attend the Howe School rather than the Pennell School (U.S. Commission on Civil Rights, *Civil Rights U.S.A., North and West, 1962, Public Schools,* 135, 136).

Prior to October 1964 there were 11 optional zones in high school districts in Indianapolis, Ind. Four such zones in all-Negro or predominantly Negro districts permitted students to choose the Crispus Attucks High School built as a Negro school in 1927, during the days of *de jure* segregation [Williams and Ryan, *Schools in Transition,* 50 (1954)] even though these four districts were within the Technical High School district (31 percent Negro). Racial enrollment data provided by Indianapolis public school system. (See Gonis, An Analysis of Desegregation Trends in the Indianapolis Public Schools, 44, an unpublished master's thesis in the Butler University Library, Aug. 19, 1965.)

For a discussion of optional areas in Buffalo, N.Y., see U.S. Commission on Civil Rights, *Civil Rights U.S.A., Public Schools, Cities in the North and West, 1963, Buffalo,* 23–27. The report concludes that: "It seems possible that the elimination of these optional areas and an adjustment of boundary lines, if necessary to avoid overcrowding, might relieve the racial imbalance in these schools." (*Id.* at 27.)

In some cases, however, where there is substantial overcrowding in majority-Negro schools, a liberal transfer plan could relieve overcrowding and segregation. The Chicago school system was presented with this dual opportunity in 1960. At that time 33,000 students were attending double-shift classes in overcrowded schools, nearly all of which were in Negro areas.[133] At the same time, a number of white schools were underutilized.[134] By encouraging transfers from the overcrowded (Negro) schools to the underutilized (white) schools, the school system might have contributed substantially to relieving both overcrowding and school segregation. The limited transfer plan put into effect by the Chicago school administration, however, could not accomplish either objective.

Prior to 1955, the Chicago school system had permitted transfers. After 1955, its official policy became one of prohibiting transfers from neighborhood schools.[135] In late 1961, however, the school administration relaxed its prohibitions. Students in overcrowded schools (largely Negro) where the average class size was more than 40 could receive temporary permits to transfer, at their own expense, to non-crowded schools (largely white) where the average class size was less than 30.[136]

The plan was incapable of facilitating any substantial number of transfers. First, transfers from Negro to white areas were inhibited by the cost of transportation. Second, the transfer permits were temporary and could be revoked if the average class size of the sending school fell to 40. The transfer policy had the effect of affirming different standards of permissible class size in Negro and white schools.[137]

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[133] U.S. Commission on Civil Rights, *Civil Rights U.S.A. Public Schools, North and West, 1962,* 223.

[134] *Id.* 202–03. The report states: "Whether or not large numbers of vacant rooms existed, it has remained reasonably clear throughout the controversy (i.e., over the number of vacant classrooms) that, viewed in terms of relative crowding of facilities, the white schools did have space. This appears clearly from the utilization of over 2,000 spaces in white elementary schools for high school branches. . . . It appears also from the redistricting plan . . . the object of which was to achieve an average of 30 students per class in 80 schools, primarily white. A later section of this report will suggest that the average class size in the Negro schools was significantly greater than the proposed 30 average. This disparity in class size between Negro and white students has never been denied by the superintendent. Indeed, its alleviation has been one of the avowed objectives of his building program in the impacted areas."

[135] Statement to the Board of Education by Benjamin C. Willis, *Proceedings of the Board of Education of the City of Chicago,* 284, Aug. 22, 1962.

[136] Report to the Board of Education by Benjamin C. Willis, *Proceedings of the Board of Education of the City of Chicago,* 925, Dec. 27, 1961.

[137] *Ibid.* The transfer policy was soon obsolete because new buildings and mobile classrooms were used to relieve overcrowding. Between 1951 and 1962 over 200 new schools or additions representing a total of 3,498 classrooms were constructed. Most of this building was in Negro areas of the Loop, in the Negro ghettos to the south and west of the Loop, and in the extreme northern portions of the city. (U.S.

Footnote continued on following page.

Transportation.—City school systems often have bused students to relieve overcrowding. Busing has greater potential than individual transfers for enhancing or reducing racial concentrations.

In Cincinnati, the practice has had the effect of heightening racial separation. While new schools were being built in response to increases in enrollment, busing was used for relief of overcrowding. In the three school years between 1955 and 1958, approximately 750 Negro children, largely from a public housing project in a predominantly white school district, were transported 5½ miles across Cincinnati to a 98 percent Negro school in a Negro neighborhood.[138] The ostensible reason for moving them was the overcrowded conditions in the regular attendance districts of the Negro students. There were, however, closer majority-white schools with available space.[139]

The official explanation for the busing was that it preserved the neighborhood school concept:

> . . . [T]he neighborhood—the concept of relationship of having children attend the school that is in the immediate proximity of the school, those closest to it [sic]. Now in this particular case all we did different from that is we picked them up and moved them some place else for a school, but in terms of parents we also tried to get the parents to maintain this relationship rather than dividing them up, into five different places and splitting them in five different spots. That's the only difference.[140]

In this case, the neighborhood school concept involved keeping all children from the same neighborhood together, regardless of where they attended school.

In Milwaukee, the school system had bused white children for many years, picking them up near their homes, returning them at the end of the day, and almost invariably integrating them into classes at the receiving school.[141] The practice changed in 1957 when the school system began

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Commission on Civil Rights, *op. cit. supra,* note 133, at 189–90. See also Chicago Public Schools, *Ten Years of Growing, 1953–63,* Annual Report of the General Superintendent (1964); Benjamin C. Willis, "Report on Mobile Classrooms," Dec. 31, 1961; "Report to the Board of Education," Dec. 27, 1961, *op. cit. supra,* note 136, at 3, states: "Our building program, together with the rental of facilities for kindergarten children and the use of mobile classrooms in double shift areas will eliminate double shift by the end of this school year."

[138] Stipulation 34, pp. 26–31; joint exhibit 8, 117, 118, *Deal* v. *Cincinnati Board of Education, supra,* note 98.

[139] Brief for appellee, p. 16, *Deal* v. *Cincinnati Board of Education, supra,* note 98; stipulation 34, at 28–30.

[140] Testimony of the former superintendent of schools, record, 179, *Deal* v. *Cincinnati Board of Education, supra,* note 98.

[141] Social Development Corp., *Milwaukee Race and Education Study,* prepared for the U.S. Commission on Civil Rights (1966) (hereinafter cited as *Milwaukee Study*). "Interschool Busing History—Milwaukee Public Schools—1949–66" (taken from the minutes of the Board of Education meetings, 1949–66, pt. IV F). Milwaukee Journal, Sept. 17, 1951, p. 15. In describing the bus trip of the first group

Footnote continued on following page.

busing Negro children to predominantly white schools. The Negro children were kept in separate classrooms at the receiving schools. They also were returned home for lunch even when the receiving schools had lunchroom facilities.[142] In one instance, a number of Negro children lived closer to their white receiving school than to the Negro sending school where they were enrolled officially. They were nonetheless required to walk to the sending school to board the bus.[143] If the boundary had been changed, these children could have been enrolled officially in the school to which they were bused as a group and then could have walked to their neighborhood school.

The practice of keeping separate the Negro children who are bused has continued in Milwaukee but now Negro pupils are permitted to remain at the receiving schools for lunch.[144] After proposals were made to integrate the bused children fully into the receiving schools on an experimental basis, the board declared busing to be educationally undesirable and discontinued busing children from two majority-Negro schools.[145]

In Cleveland, the school board's policy on busing developed against a background of conflicting community protest. As a result of rapidly increasing Negro enrollment, both double-session classes in Negro schools and an extensive school construction program were begun in the late 1950's. While awaiting the completion of new school buildings,

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of children transported in 1951 (all white) the newspaper stated: "The children who had taken the long bus ride were well mixed in with children from the Auer Avenue neighborhood. They were separated . . . at lunch time when the bus riding pupils ate hot lunches in the school cafeteria and at 3:30 p.m., when the buses came to take them home." White children remained for lunch at the receiving school when there were facilities.

[142] *Milwaukee Study* at 5, sec. V.B.

[143] *Id.* at 10, sec. V.B.

[144] The first instance of lunch for Negro students at the receiving school was in 1964. See Milwaukee Sentinel, Jan. 31, 1964, pt. 1, p. 3; *Milwaukee Study* at 10, IV F.

[145] Report of Superintendent of Schools to Special Committee on Equality of Educational Opportunity, May 20, 1966, and Memorandum on the Meinecke Avenue School, Milwaukee Public Schools, Office of the Superintendent, August 11, 1966. In order to eliminate busing altogether from two Negro schools, the Brown Street School and the Lloyd Street School, the Board leased an unused Lutheran school (Meinecke) in the area, which would accommodate the 290 students. Milwaukee Sentinel, July 29, 1966, pt. I, p. See also Memorandum on the Meinecke Avenue School, *supra.* Meinecke became a 99 percent Negro school. There was available space at the time in the 84 elementary schools which were 90 percent or more white. Memorandum on Meinecke Avenue School, *supra* (creation of the school); Milwaukee Public Schools, *Distribution of Elementary Schools, Pupils, and Staff by Proportion of Negro Pupils in Milwaukee, 1965–66* (racial composition of schools). In these schools the average percent of capacity was 73.7. *Milwaukee Study,* Table IX, "Relationship of Mean Capacities and Enrollments in Elementary Schools to Percent of Nonwhite Students, and the Percent of Mean Enrollment of Mean Capacity, 1965." Several citizen and parent groups rented a bus, and, under the Board of Education's free transfer plan, began to transport over 100 students from over-utilized schools to 9 schools in outlying districts. Since this busing is not done under the auspices of the school system, the children are integrated at the receiving schools. Milwaukee Journal, Sept. 28, 1966, p. 24 .

nearly 2,000 Negro elementary school children from six majority-Negro schools were bused to four underutilized schools, three of which were nearly all-white and the fourth desegregated.[146] During the 1962–63 school year, the Negro children bused to these underutilized schools were kept in separate classes.

In September 1963, after local civil rights groups protested against keeping the bused children separate, the school board pledged fullest possible incorporation of transportation pupils into the receiving schools consistent with sound educational practice, but left the timetable for implementation up to the school administration.[147] The school board's proposal to desegregate the bused children was opposed vigorously at a meeting with school officials called by the PTA at one of the white receiving schools.[148] The 1963–64 school year began with the bused children still being kept separate from the schoolchildren in the receiving schools. In February 1964, after picketing by civil rights groups, the school board adopted a resolution to desegregate the classes by September, but the children were no longer to be sent to white schools.[149] Rather, they would be sent to nearby Negro schools. After further protest by civil rights groups, a compromise agreement was reached calling for the immediate desegregation of the bused classes. At the same time, the school board announced that it would terminate the busing as soon as possible, announcing a speedup in the construction of three new schools designed to absorb the bused Negro children. On March 9, 1964, the bused classes were desegregated without incident.[150]

The potential of busing for reducing racial concentration in schools was not realized in the cities discussed above. When faced with the necessity of transporting Negro children from overcrowded schools, these school systems chose either to bus the children to other Negro schools or to keep them separate from the children at white receiving schools. In one of the cities, the Negro children were integrated into the white receiving schools but only after community protest. Further, the busing was only a temporary measure. The solution chosen to meet the problem of overcrowding in majority Negro schools was the construction of additional schools in Negro neighborhoods.

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[146] See Cleveland Board of Education, *Annual School Housing and Building Program Reports,* 1961–62, 1962–63.

[147] Regular meeting of the Cleveland Board of Education, Sept. 30, 1963, "Brief for Appellant", App. pp. 247a, 248a, *Craggett* v. *Board of Education* (Cleveland), 234 F. Supp. 381 (N.D. Ohio, 1964).

[148] Cleveland Plain Dealer, Oct. 16, 1963, p. 7.

[149] Western Reserve University, *Racial Isolation in Cleveland Public Schools,* a study prepared for the U.S. Commission on Civil Rights, part II, p. 44 (picketing) (hereinafter cited as *Cleveland Study*). Resolution No. 30576, Board of Education, adopted Feb. 10, 1964. *Cleveland Study,* 48a, 48b, and 48c.

[150] In its haste to complete the new school buildings and to end the transportation of the Negro children, the board rescinded the contracts with the architects for two of the new schools and used instead the drawings and specifications of the board's own architects which previously had been approved by the board. *Craggett* v. *Board of Education, supra,* note 147, at 384.

Further, when the first of the new schools was ready for occupancy, the attendance boundaries were drawn to include the bused children even though the school itself was not initially located within its own boundaries. *Id.* Reply Brief and Appendix of Plaintiffs at 14a–15a; excerpt from vol. III of the deposition of Theodore Hartman, chief of the Bureau of Housing, Equipment, and Supplies, Cleveland School System. The board nonetheless insisted that its actions represented a return to the neighborhood school policy. "The evidence clearly shows the board felt neighborhood schools were more desirable than transported classes." *Craggett* v. *Board of Education, supra,* note 147, at 387.

* * *

The system of geographic school attendance, imposed upon segregated housing patterns, provides the broad base for racial isolation in Northern schools. In earlier years, city school attendance areas encompassed considerably more territory and a more heterogeneous population. In recent decades, as geographical attendance areas have become smaller and residential segregation has intensified, city schools have become more socially and racially homogeneous. At the same time, the concept of neighborhood has been changing. Greater population mobility and significant changes in the pattern of urban life generally have tended to diffuse traditional neighborhood patterns. In city school systems, on the other hand, children attend schools closer to their homes than in the past. Today, geographical school zoning in itself is the basis for persistently high levels of school segregation.

School segregation has been compounded by other school policies and practices. Purposeful school segregation, apparently a legacy of an era when laws and policies in a number of places in the North expressly authorized segregation by race, has been found in recent years in a few Northern cities. Apparently neutral decisions of school officials often have a similar effect. Decisions on school sites, size of school, attendance areas, and methods of relieving overcrowded schools offer school officials wide latitude for maintaining or reducing racial isolation in the schools. In many Northern and Western school systems the effect of these decisions has been to perpetuate, rather than reduce, separation in the schools.

Southern and Border State Schools

School segregation in the Southern and border States was sanctioned by law until the 1954 *Brown* decision. As the elements of legal compulsion have been removed, the causes of racial isolation in Southern and border city schools have become more complex. Today it is attributable to remnants of the dual school system, methods of student assignment, residential segregation, and to those discretionary decisions familiar in the North—site selection, school construction, transfers, and the determination of where to place students in the event of overcrowding.

Geographical Considerations

Residential Segregation.—After the *Brown* decision, two main approaches to school desegregation were taken in Southern and border cities. The first was to convert the dual attendance zones, drawn according to race and sometimes overlapping, into single attendance zones without regard to race. Ostensibly, student assignment would then depend only on proximity and convenience. The second was to allow students some freedom of choice in their assignment. Common to the many variations of the free choice approach is the principle that if more students choose a given school than it can accommodate, first priority will be given those students living in the school's immediate area.

In all approaches to desegregation in Southern and border cities, then, residence is an important factor in determining school attendance. Since residential segregation generally is as intense in Southern and border cities as in Northern cities,[151] the racial composition of Southern and border city schools substantially reflects the pattern of residential segregation.

St. Louis is a case in point. There, the school administrators voluntarily complied with the *Brown* decision in 1954 by converting from dual to single attendance school zones over a two-year period.[152] The new attendance zones were established after carefully counting public school children on a block-by-block basis without regard to race.[153] Residential segregation was extensive, however,[154] and relatively few boundary changes were made in converting from dual to single attendance zones.[155] Most of the all-Negro school remained unchanged.[156] By 1965, 91 percent of the Negro elementary school children attended schools that were nearly all-Negro.[157]

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[151] See Taeuber and Taeuber, *supra,* note 49, 37. The mean residential segregation index for Southern cities is 90.9 for 1960, compared to 83.0 for cities of the North and West. The index for Cleveland is 91.3; for Nashville, 91.7. The index for Gary is 92.8; for Memphis, 92.0; the index for Tulsa is 86.3; for Buffalo, 86.5 *Id.* at 39–40.

[152] *St. Louis Study* 35 (1966).

[153] Valien, *The St. Louis Story, A Study of Desegregation,* 27–28 (1956); *St. Louis Study* at 6.

[154] In 1960, the index of residential segregation in St. Louis was 90.5. Taeuber and Taeuber, *supra,* note 49, at 33.

[155] According to a statement by the Superintendent of Schools, Dr. Philip G. Hickey, quoted on Sept. 4, 1955, in the St. Louis Post Dispatch, 62 out of 119 elementary school boundaries were changed in the conversion from a dual to a geographical zoning plan. An examination of the elementary school boundary lines in 1954–55, before desegregation, and in 1955–56, after redistricting, shows that there were very few changes in the formerly "white" districts. The "Negro" districts which reached out to cover the few Negroes living in the south and southeast were cut back to the Negro area. *St. Louis Study,* based on boundaries specified in the minutes of the Board of Education of St. Louis, 1954–55 and 1955–56.

[156] For high schools, see Valien, *supra,* note 153, at 38. The St. Louis Public School Department estimated in September, 1956, that 37 formerly all-white elementary schools would have Negro children in attendance and 13 formerly all-Negro elementary schools would have white pupils on their rolls. Thus, 73 of the 123 elementary schools would not be affected at all. See St. Louis Public Schools, *Desegregation of St. Louis Public Schools,* 45–47 (1956).

Again in Memphis the new single attendance zones developed by the school board resulted in less than 1 percent of the student body attending school with children of the opposite race. In a suit brought against the school system, it was charged that school boundaries had been gerrymandered to perpetuate segregation.[158] An expert witness for the Negro plaintiffs showed how the boundaries could be redrawn based purely on nonracial considerations. Under this system of neutral boundaries, approximately 1,300 more children would have attended schools formerly serving the opposite race. Yet this still would have amounted to only slightly more than 1 percent of the total school enrollment.[159] Thus even if neutral boundaries had been drawn for Memphis, the extent of school desegregation would have been minimal because of the severe residential segregation in the city.

Residential patterns, however, important as they are, do not invariably determine the racial composition of Southern and border city schools. Under any system of student assignment in which place of residence plays an important role, school boards and administrators have discretionary powers that can intensify or reduce segregation. Their decisions often have served to reinforce and perpetuate racial isolation.

Site Selection.—As noted in the discussion of Northern schools, the location of new schools has a marked effect on patterns of isolation. Whether a school system uses geographical zoning, free choice, or a variation on these methods of assignment, a key determinant of the student racial composition is the location of the school.

At the time of the *Brown* decision, Southern educators were aware that the location of schools was an important factor in maintaining segregated school attendance patterns.[160] A story in a Memphis, Tenn., newspaper on May 18, 1954, is illustrative:

> Ruling Fails To Shock City: Officials See Little Difficulty
>
> School authorities in Memphis yesterday evidenced no surprise at the [Brown] decision. . . . Mr. Milton Bowers, Sr., President

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[157] *St. Louis Study,* at P–1 and P–2. "Racial Distribution of Pupils, St. Louis Elementary and Secondary Schools," based on St. Louis Public Schools Instruction Department, *The Status of Integration in the St. Louis Public Schools During the 1965–66 School Year; A Factual Report to the Board of Education,* November, 1965, and also the first supplement to that report dated October 1966.

[158] See *Northcross* v. *Board of Education* (Memphis), 333 F. 2d 661 (6th Cir. 1964).

[159] Testimony of Floyd L. Bass, transcript, vol. III, pp. 427, 462, and E. C. Stimbert, Superintendent of Schools, transcript, vol. II, p. 236, *Northcross* v. *Board of Education* (Memphis), *supra,* note 158. The total school enrollment was 105,637.

[160] *See Southern School News,* January 1955, p. 3. The Chairman of the State

Footnote continued on following page.

> of the Memphis Board of Education, said, "We have been expecting this to happen a long while. . . . We believe our Negroes will continue using their own school facilities since most of them are located in the center of Negro population areas. . . . [Negro schools are] fully equal to and in some instances better [than white schools]. We are very optimistic about this [ruling]." [161]

Throughout the 1950's, Southern cities made considerable investments in new school facilities. In Houston, almost every school constructed after 1955 was located in racially homogeneous residential areas. Of the 56 Negro schools in Houston in 1965, for example, 49 were newly built or enlarged in Negro residential areas after 1955.[162] One Negro enclave, entirely surrounded by white residential areas, had only five elementary schools in 1955. Instead of enlarging the capacity of schools ringing the Negro area to serve both Negro and white children, the system accommodated the growing Negro enrollment within the Negro area. By 1965, the five Negro elementary schools had been enlarged and three more elementary schools had been built within the Negro area. They remained all-Negro. Five of the seven white schools outside the Negro area were nearly all-white in 1965.[163] More school construction is

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Board of Education of Arkansas is quoted: "The only hope the schools have of maintaining segregation . . . (is to make Negro schools so attractive that) the Negroes will not demand integration. . . . However, if the districts build adequate facilities now, in most instances the new buildings will be located in Negro districts." See also Miss. Code Ann., tit. 24, secs. 6216–01 to 6672 (Supp. 1962) calling for equalizing Negro schools and reorganization of school systems throughout the State. The intent of the equalization program reportedly was to prevent desegregation. Aside from building new Negro schools, the program called for "relocation of many white schools according to student residences." *Southern School News,* February 1957, 13. See also, Atlanta Constitution, May 19, 1954, p. 6: "Reports from over the South indicated some areas may try to escape the impact of the antisegregation decree by 'zoning' schools in natural population patterns. . . ." See also Pierce et al., *White and Negro Schools in the South* at 297 (1955), where it was predicted that Southern schools would use districting powers to perpetuate segregation.

[161] Memphis Commercial Appeal, May 18, 1954, p. 1.

[162] Defendant's exhibit No. 3 and plaintiff's exhibit No. 2, *Broussard* v. *Houston Independent School District,* C.A. 66–H–445, S.D. Tex., June 7, 1966. See also U.S. Commission on Civil Rights, *Civil Rights, U.S.A., Public Schools, Southern States 1963, Texas,* 35–38. The Board first considered desegregation in 1955 and made it clear that it was postponing action until schools could be built to minimize the impact: "If the bond issue is submitted and approved by the voters and a construction program is carried out so as to give every section of the city reasonably equal and adequate school facilities and a liberal policy of transfer is continued so that no Negro student will be compelled to attend against his will a school predominantly white in student body and teaching staff, and no white child will be compelled against his will to attend a school predominantly Negro in student body and teaching staff, it is our opinion that such a course will be approved by the overwhelming majority of our people, both white and Negro, and our problems with reference to desegregation will largely be resolved." *Id.* at 37–38.

[163] Plaintiff's exhibit No. 2 and defendant's exhibit No. 3, *Broussard* v. *Houston Independent School District, supra* note 162. The new Negro schools were, Blackshear (which also received an addition), 100 percent Negro in 1965, and Lockhart, 100 percent Negro in 1965. Negro schools receiving additions only were: Dodson

Footnote continued on following page.

planned under a 1965 bond issue, and the Houston school superintendent has identified 16 of the 50 new projects as "for predominantly Negro schools." [164]

The pattern is similar in Atlanta. Since 1954, classroom space has for the most part been added in areas of high Negro concentration and schools have been constructed for white children in areas where few Negroes lived. Four high schools which opened in 1960, for example, were located almost at the city limits in virtually all-white areas.[165] During the current school year, two of the schools are 96 percent white; the other two are 100 percent white.[166] Atlanta's proposed 1966 school building program continues to emphasize construction in racially homogeneous residential areas. Three new elementary schools, two high schools, and additions to an elementary and two high schools are planned for Negro residential areas. There also are plans to purchase additional land for the expansion of one of the white high schools on the fringe of the city.[167]

This pattern is common throughout the South. As Table 10 shows, the great majority of Southern and border State elementary schools built

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(2 additions), Douglass (1 addition), J. W. Jones (1 addition), Dunbar (1 addition) and Turner (1 addition)—all 100 percent Negro in 1965. One new white school, Rusk (newly constructed in 1960), was 99 percent white in 1965. Montrose, Fannin, Lubbock, and Lantrip, existing white schools ringing the ghetto, were 99–100 percent white in 1965. Two other formerly all-white schools outside the ghetto, MacGregor and Southland, were 58 percent Negro and 32 percent Negro in 1965.

[164] Testimony of Dr. Glenn Fletcher, Acting Superintendent, Record, vol. II, p. 256, *Broussard* v. *Houston Independent School District,* C.A. *supra* note 162. Plaintiffs in this case (still in progress at this writing) are seeking to enjoin the system from constructing further schools in segregated residential areas. Brief for plaintiff, pp. 9–10, *Broussard* v. *Houston Independent School District.* Defendants base their argument on the educational desirability of neighborhood schools and the absence of legal requirement to take positive steps to achieve racial balance in the schools. Record, vol. V, p. 1173, *Broussard* v. *Houston Independent School District.* The pattern of placing new schools in racially homogeneous areas is maintained in the school system's plans for a building program to meet the anticipated growth in enrollment by 1970.

[165] For the racial composition of each new school facility constructed since 1954, see Clark College, *Race and Education in Atlanta,* a study prepared for the U.S. Commission on Civil Rights [hereinafter cited as *Atlanta Study*] 100–109. The four white high schools referred to in the text are Therrell, Dykes, East Atlanta, and George. (*Id.* at 29.) For a map of Negro residential areas in Atlanta, see *Atlanta Study,* overlays based on Atlanta Region Metropolitan Planning Commission, "Population and Housing" (1965).

[166] Information concerning the racial composition of Atlanta public schools as of September 1966 was obtained by the Commission staff from John W. Haldeman of the office of the Superintendent of Schools of Atlanta, by telephone interview on Nov. 4, 1966.

[167] *Atlanta Study* at 98. See also the Atlanta school board's *Proposed 1966 Building Program,* map, and list of proposed construction projects, distributed by the school board during the campaign for the 1966–67 bond issue.

or enlarged since 1950 are nearly all-white or nearly all-Negro.[168] In San Antonio, six of the city's seven nearly all-Negro elementary schools were built or enlarged since 1950; in Houston, 42 of the city's 44 Negro elementary schools were built or enlarged since 1950.

TABLE 10.—*Elementary school construction in 11 Southern cities, 1950–65*

(a)	(b)	(c)	(d)	(e)
City	Number schools newly built or enlarged by addition	Number opened 90–100 percent white and were 90–100 percent white in 1965	Number opened 90–100 percent Negro and were 90–100 percent Negro in 1965	Percent total Negro enrollment in 1965 attending schools listed in column (d)
Nashville	46	36	9	58.7
Tulsa	50	41	6	54.7
San Antonio	57	43	6	59.0
Richmond	20	7	12	58.8
Lexington, Ky	9	3	2	49.7
Knoxville	19	13	5	68.8
Dallas	106	79	11	44.3
Houston	133	87	42	91.5
Baltimore	74	13	35	42.3
Atlanta	63	25	34	70.3
Kansas City, Mo	31	12	6	25.6

Not only did most of these schools open almost totally segregated but they remained so in 1965. In Richmond, this was true for all but one of the new elementary schools constructed or enlarged since 1950. In Atlanta, it was true for all but four schools. In Nashville, 59 percent of the total Negro elementary enrollment attended schools that were almost entirely Negro at the time of construction and remained so in 1965. In Knoxville, the figure was 69 percent and in Houston 92 percent.

School Size.—In addition to the selection of sites for new schools, decisions on school size are important. The size of a school determines the number of children who may attend, whether or not the school assigns students strictly on the basis of geographic zoning. Although a school may be located where it is possible to draw a racially mixed student body, its size may so limit the area it can serve that it will be segregated. A school in a Negro enclave surrounded by whites, for instance, could be constructed large enough to accommodate both the Negro and white children, or so small that it could serve only the Negro children in the enclave.

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[168] All school construction and enrollment data from official school documents for each system listed in the table. In St. Louis, of the 45 elementary schools built since 1954 or enlarged by addition since 1961, 4 were 10 to 90 percent Negro in 1965. Four are known to have opened less than 10 percent Negro and to have remained so, and 21 opened more than 90 percent Negro and remained so. Forty percent of the 1965 Negro elementary enrollment attended these 21 schools. The racial composition of 15 of the 45 schools at the time construction was completed is unknown. Thirteen of these were more than 90 percent Negro in 1965. *St. Louis Study,* exhibits E–5, E–6 and P–1 and P–2.

Size also is a consideration when school officials must decide which schools should be enlarged and what their enlarged capacity should be. These decisions can determine a school's racial composition. For example, the Sojourner Truth Elementary School in San Antonio opened in 1950 as a 192-pupil school to serve a very small Negro residential area completely surrounded by whites. Four blocks away was a white school, Hidalgo. In 1959, Hidalgo was enlarged, but only enough to accommodate its nearly all-white student body. In the 1959 school year, Hidalgo enrolled 346 students, 2 of whom were Negroes. Sojourner Truth, which was not enlarged, remained all-Negro.[169]

The Sam Hill Elementary School, in Knoxville, is another example of the effects of decisions regarding school size. The school was built in 1952 to serve a small Negro area. In 1958, in order to contain an expanding Negro population, it was enlarged to a capacity of about 400. Yet two blocks away was the all-white Londale Elementary School, which in 1960 was underenrolled by over 100 pupils. In 1965 Sam Hill remained all-Negro, and Lonsdale was 98 percent white.[170]

Grade Structure.—Another factor determining the racial composition of a student body is the number of grades accommodated by the school. Ordinarily, the fewer the grades the narrower the age limits and the larger the geographical area that can be served. Conversely, the more grades taught at a school the smaller the area it will serve. There have been a number of instances in Southern and border cities where schools have served more grades than is customary and this deviation from normal school practice has had the effect of preserving school segregation.

The Meigs School in Nashville serves grades 1 to 12. It is the only school in the city serving 12 grades. Most Nashville schools are organized on a 6–3–3 or an 8–4 pattern. The school is located in a small Negro area and was all-Negro in 1965.[171]

The Dunbar Junior-Senior High School in Lexington, Ky., is the only secondary school in the city that combines a junior and senior high school. It is located in a Negro area and serves an all-Negro student body, comprising 80 percent of all Negro secondary students in the city. Since 1949, it has been enlarged twice to accommodate its all-Negro enrollment.[172]

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[169] School data from San Antonio school system. Racial composition of neighborhoods for San Antonio, and for cities referred to in notes 170–172 *infra*, from U.S. Bureau of Census, *U.S. Census of Housing: 1960*, Series HC(3).

[170] School locations from *Dolph's Map of Greater Knoxville, Tenn.* Other data supplied by the Knoxville school system.

[171] School locations from *Arrow Official City Map; Greater Nashville, Tenn.* Other data supplied by the Nashville school system.

[172] School locations obtained from U.S. Office of Education. Other data supplied by the Lexington school system. The J. N. Ervin School (all-Negro) in Dallas is

Footnote continued on following page.

Thus the location, size, and grade structure of school facilities can be key factors in determining a school's racial makeup. Decisions on location, size, and grade structure of school facilities often have served to perpetuate racial separation in Southern and border State schools. In addition, the manner in which free choice systems have been administered sometimes has contributed to school segregation.

Free Choice Provisions

Under the free choice plans prevalent in the South, students generally are permitted or required to state a preference for the schools they wish to attend. If more students choose a given school than it can accommodate, priority typically is given to students who reside in the immediate area. Thus, geographical considerations may influence the racial composition of the schools even under free choice plans. Under these plans, however, considerations unrelated to geography also determine racial composition. In Houston, for example, although dual attendance areas officially are abolished, children automatically are re-enrolled in schools they previously attended under the system of dual boundaries, and their younger brothers and sisters also are given preference at these schools. Other children are permitted to enroll only if there is space to accommodate them. The fact that a Negro child may live closer to a white school than some of the white children does not guarantee that he will be accepted.[173]

Even where race is not a factor in the initial school assignment of children, school officials may influence the exercise of choice in ways that intensify segregation. In Atlanta, the superintendent of schools sent a letter to the parents of children in the Kirkwood School (100 percent white), which was located in an area becoming all-Negro, notifying them that Negroes were being permitted to transfer to Kirkwood. The white children transferred elsewhere and the Kirkwood School, which had been all-white in 1964, was all-Negro in 1965.[174]

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another example. It is the only school in the system serving 12 grades. It is located in a Negro area. The South Oak Cliff High School, grades 10–12, serving the adjacent white area had only 9 Negro children enrolled in 1965. Data supplied by the Dallas school system.

[173] *Broussard* v. *Houston Independent School District, supra* note 162, at 423–424; see also Houston Independent School District, *Superintendent's Bull.*, Aug. 4, 1966.

[174] Atlanta Journal, Feb. 15, 1965, p. 1. In a footnote to *Calhoun* v. *Latimer*, 10 *Race Rel. L. Rep.* 621 (1965), the Federal district court described the facts surrounding the change of the Kirkwood School from all-white to all-Negro, as follows: "A typical instance of [rapid changes in residential patterns] involved the Kirkwood Elementary School, formerly all-white, but in an area where the sudden and substantial influx of Negroes left the latter without adequate school facilities. The board allowed, but did not compel, white students to transfer to Wesley and Whiteford Elementary Schools, and gave a choice to the faculty of the Kirkwood School to remain or leave, and the principal of the latter with some other personnel, remained at the

Footnote continued on following page.

There are other factors that impede desegregation under free choice plans. A prerequisite to the exercise of free choice by white and Negro students would appear to be the elimination of racial identification of schools. The racial identity of Southern schools, however, is maintained in a variety of ways.[175] One is the continued segregation of teaching staff. In Houston, for example, only six of the city's more than 200 schools had any desegregation of their full-time staffs in 1965. This involved only 17 out of some 9,500 teachers in the city.[176] In Louisville, 84 percent of the Negro teachers taught at schools more than 90 percent Negro.[177] In Atlanta, only four of the 59 schools 90 percent or more Negro had any white teachers by 1965.[178] In Baltimore, 85 percent of the Negro staff were in schools more than 90 percent Negro in 1965. The story is the same in many other cities.[179]

Kirkwood School." The court found, in discussing the use of proximity as a criterion for transfers that this was perfectly proper: "Another illustration [of shifting population] is Kirkwood Elementary School above referred to where, although it was not covered at the time by the Atlanta plan, the large influx of Negroes into the community was solved by voluntary application of many white students for transfers to Wesley and Whiteford Schools, making room for Negroes in close proximity to Kirkwood. No discrimination was practiced in this regard." *Id.* at 625.

[175] In Houston, for example, the Research Department still arranges its files according to "white" and "colored" schools. (Observed in staff visit to Houston public schools, Aug. 1966.) In the fall of 1964, reports of the results of achievement test scores were sent to junior high school principals. The reports sent to Negro schools were labeled results of "Colored Junior High Schools." Averages were given by "City (White); City (Colored); Your School." Reports of the same test results sent to white schools were broken down by averages for "City" and "Your School." Negro test score results were not included in the "City" average. Plaintiff's Ex. No. 18, *Broussard* v. *Houston Independent School District, supra* note 162. In Baltimore, the Merganthaler Vocational High School was opened in 1953 for a white student body. (Baltimore City Public Schools, *Directory of the Public Schools of Baltimore, Md.—1953–54,* 77.) At the same time a new Negro vocational high school was planned. (*Southern School News,* September 1954, 7.) In 1954, when the schools were desegregated, Negro children remained in their old school awaiting completion of the new school, and Merganthaler remainder virtually all-white. (Information obtained from Miss Clara Grether, Research Specialist, Bureau of Research, Baltimore City Public Schools; Baltimore City Schools, *Net Roll by Grades and Types as of October 1954—White and Negro—Taken from Child Population Register.*) In 1955, the new Negro school opened. It was named Carver and had an all-Negro student body. (School construction data for 1955, supplied by Bureau of Research, Baltimore City Public Schools.) Both of these schools draw students from all parts of the city. In 1965 they remained segregated. Baltimore City Public School, *Net Roll by Race, Oct. 31, 1965.* See also U.S. Commission on Civil Rights, *Survey of School Desegregation in the Southern and Border States, 1965–66,* 33–35 (1966).

[176] *Broussard* v. *Houston Independent School District,* Defendants Ex. No. 3, *op. cit. supra,* note 162.

[177] Samuel V. Noe, Superintendent of Schools, *Status of Desegregation in the Louisville Public Schools, Sept. 23, 1966* (Oct. 17, 1966), and State Department of Education, *Integration in the Public Schools of Kentucky,* Oct. 1965.

[178] Data received from Atlanta Public Schools.

[179] City of Baltimore, Bureau of Research, Department of Education, *Faculty By Race, September 30, 1965.* In Raleigh, N.C., staff segregation on the elementary level remained complete in 1965, so that all but 54 Negro elementary children attended all-Negro schools with all-Negro staffs. (Source: Raleigh Public School

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The availability of transportation to a school outside one's neighborhood also limits the exercise of choice. In some cases transportation is available only on a basis which will promote, not reduce, segregation. In Houston, for example, bus routes devised to serve the dual school system were not revised when the dual system was abolished officially.[180] Consequently, in 1965, children received transporation only as it was routed to schools under the dual attendance system. In many instances, buses traced the actual boundaries of the abolished dual areas.[181] The vehicles traveled long distances to carry Negro children past white schools to Negro schools, and while children past Negro schools to white schools. White children living in the Piney Point area, served by a Negro school, received transportation to the all-white Pilgrim school.[182] Since the buses were not routed to carry Negro children to white schools, many Negro children could not choose to attend white schools for lack of transportation.[183]

The exercise of free choice also is limited by school authorities' determinations of what constitutes overcrowding. If different standards are applied to majority-white and majority-Negro schools, they can maintain or intensify segregation.

The Board of Education in Baltimore provided that when a school was in danger of becoming overcrowded, its usual open enrollment program could be discontinued and the school "districted," permitting the attend-

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System.) In Richmond, Va., all but two Negro elementary teachers remained at all-Negro schools in 1965. Twenty-four white elementary teachers taught at four schools 90 percent or more Negro. Ninety-five percent of the Negro elementary children in 1965 attended Negro schools with virtually all-Negro staffs. (Source: Richmond Public School System.) In Wilmington, Del., where pupil and staff desegregation was more advanced in 1965, 40 percent of the Negro elementary children remained at nearly all-Negro schools with virtually all-Negro staffs. Seventy-six percent of the Negro elementary staff remained at schools 90 percent or more Negro. (Source: Wilmington Public School System.) See also *App. A,* Table 1, for extent of staff desegregation in Southern and border cities.

[180] *Broussard* v. *Houston Independent School District,* Record, Vol. III, pp. 590, 609, 611, *supra,* note 162. The director of school transportation testified that the bus routes used during the 1965–66 school year were the same as those used when the system had been segregated. He stated that practices would be revised for the 1966–67 school year so that Negro children, riding a "Negro bus" that passed a white school, could alight at the white school if they wished. If the demand were sufficient, buses would also carry children from Negro areas to white schools. However, demand had to be made known by the middle of August. It seems unlikely that the demand could be known by the middle of August, since the choice period was not until the end of August. Furthermore, the system did not publicize the revised transportation policies, making it likely that many Negro children would not choose a white school, thinking there was no possible way to get there. See Houston Independent School District, "Letter to Parents on Registration," Aug. 5, 1966.

[181] Houston Independent School District, *Report on Geographical Sources for School Bus Transportation, Pupils Eligible and Ineligible,* (Dec. 16, 1965) and official school board map of elementary boundaries, 1964–65.

[182] *Ibid.*

[183] Staff interviews with Mrs. Gertrude Barnstone and Mrs. Charles White, board members, Houston Independent School District, Prof. William McCord, Department of Sociology, Rice University, and Rev. and Mrs. William Lawson, August 1966.

ance only of those children residing within the geographical district lines.[184] But different standards of overcrowding were used for white and Negro schools. White schools were districted when equally crowded Negro schools were not. Some Negro schools were put on double shift.[185] One of the criteria used by administrators for determining when a school was threatened with overcrowding was when the area surrounding the school was "in the process of changing from a white to a Negro residential area." [186] The arrangement of these district lines sometimes had the effect of maintaining racial separation in racially mixed areas. An example was Baltimore's Elementary School 242, which was all-white in 1954. That year the boundary lines were extended to include the white children living in an area that was becoming predominantly Negro. As a result, School 242 was nearly 50 percent over capacity. A nearby Negro school opened the same year well under capacity.[187]

Only limited school desegregation has been achieved under free choice plans in Southern and border city school systems. A combination of factors has operated to retard school desegregation under these plans. Some factors, such as the use of racial criteria in honoring student preferences, the maintenance of school staff segregation, and the perpetuation of dual boundaries through bus transportation routes, can be readily identified as interfering with the exercise of free choice and impeding progress in school desegregation. Other factors, including deeply entrenched patterns of dual attendance in Southern and border city schools, cannot be assessed so easily. Nonetheless, the degree of school segregation in these free-choice systems remains high. In some instances racial isolation is greater than it would be under a strict system of geographical zoning. In Atlanta, for example, the nearest high school for many elementary students attending Bolton (100 percent white), Chattahoochee (100 percent white), and Mount Vernon (92 percent white) is Archer High School (100 percent Negro). Under strict geographical zoning these three elementary schools normally would feed into Archer High School. Under Atlanta's free choice system, however, students graduating from these elementary schools attend O'Keefe High School (97 percent white).[188]

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[184] Baltimore Public Schools, *Desegregation Policies and Procedures, 1954–63,* May 22, 1963, at 2–3, 10–11.

[185] The average percentage enrollment of capacity for nearly all-Negro elementary schools in 1954 was 138.6 percent, whereas for nearly all-white schools it was 123.1 percent. Yet, only one-fifth of the Negro schools were districted compared to one-third of the white schools. Computed from capacity and enrollment figures given in City of Baltimore, Bureau of Research, Department of Education, *Physical and Administrative Details of School Buildings,* 1954.

[186] Baltimore Public Schools, *op. cit. supra* note 184, at 10, 11.

[187] *Id.* at 88; see map of Baltimore, Md., for location of schools; for school capacity and enrollment figures, see Baltimore Department of Education, *supra* note 185. Memorandum to the School Plant Planning Committee from the Bureau of Research, Oct. 24, 1956, Subject: Northwood Elementary School No. 242 Population Pressure and the Yorkwood School No. 219. In 1959 a new school, No. 209, was constructed one-half block west of the district line for School No. 242. Although the school was located in an integrated area, it opened 90 percent Negro.

In Houston, too, some schools—Katherine Smith and Piney Point, for example—would have been less segregated had neutral attendance zones been drawn. But under Houston's free choice plan Smith School was all-white and Piney Point School was all-Negro in 1965.[189] Thus even in cities with high degrees of residential segregation, free-choice plans sometimes have produced more rigid school segregation than under a system of school attendance based entirely on residence.

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In Southern and border cities, then, school segregation results from a number of factors. First, zoning plans—even if free from gerrymandering—may result in school segregation merely because of rigid residential segregation. Second, carryovers from the dual school system, such as transportation and segregated teaching staffs, still persist. In addition, school segregation in Southern and border cities has been furthered by decisions on site selection, school size, grade structure, transfer priorities, and standards of overcrowding.

Summary

The causes of racial isolation in city schools are complex and the isolation is self-perpetuating. In the Nation's metropolitan areas, it rests upon the social, economic, and racial separation between central cities and suburbs. In large part this is a consequence of the discriminatory practices of the housing industry and of State and local governments. The Federal Government also shares in this responsibility. Federal housing policy, for many years openly discriminatory and attuned largely to the suburban housing needs of white, affluent Americans, has contributed substantially to this separation. Even now, the Federal Government's policy on equal housing opportunity and its programs aimed at providing housing for low-income families are inadequate to reverse the trend toward racial isolation in metropolitan areas.

The separation between city and suburban populations has been reinforced by increasing disparities in wealth. At a time when the financial burdens of central cities and the demands for social services have been growing, cities have been losing fiscal capacity. Cities which formerly surpassed suburbs in educational expenditures are now falling behind. State education aid fails to equalize the growing disparity between suburban and central city public schools and recently enacted Federal aid programs are insufficient to reverse the trend. This disparity adds further impetus to the existing movement of affluent white families to the suburbs. In many metropolitan areas, racial concentrations in the central city schools have reached the point where solutions are no longer even theoretically possible within the city alone.

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[188] *Atlanta Study,* at 125 (proximity), 132 (feeder pattern). Telephone interview with John W. Haldeman, Administrative Assistant, Office of Superintendent, Nov. 4, 1966 (racial composition 1966–67).

[189] *Broussard* v. *Houston Independent School District, supra* note 162, Plaintiff's Ex. No. 2, and Defendant's Ex. No. 3. Houston Independent School District, *Report on Geographic Services for School Bus Transportation, Pupils, Eligible and Ineligible, Dec. 16, 1965.* White children were bused from near the all-Negro Piney Point School to the white Pilgrim School some distance away. Negro children were bused from near the all-white Smith School to the all-Negro Highland Heights School some distance away. Because these children live so close to schools serving the other race, were a neutral boundary to be drawn, some desegregation would occur.

The pattern of residential segregation is reflected within the central city as well. Here, too, the private housing industry, and government at all levels, share much of the responsibility for creating and perpetuating residential segregation. Geographical zoning is the common method of determining school attendance and the neighborhood school is the predominant attendance unit. When these are imposed upon the existing pattern of residential segregation, racial isolation in city schools is the inevitable result. In addition, the day-to-day operating decisions of school officials—the location of new school facilities, transfer policies, methods of relieving overcrowded schools, determination of the boundary lines of attendance areas—often have further intensified racial isolation. In the North, where school segregation was not generally compelled by law, these policies and practices have helped to increase racial separation. In the South, where until the *Brown* decision in 1954 school segregation was required by law, similar policies and practices have contributed to its perpetuation.

Chapter 3

Racial Isolation and the Outcomes of Education

Since 1954, when the Supreme Court ruled that segregation in public schools sanctioned by law violated the Constitution, increasing attention has been given to the effects of school segregation not based on law. Does such segregation have a negative effect upon the performance and attitudes of Negro students?

The question is difficult to answer, for it requires that the influence of one aspect of a child's education—the racial composition of his school—be determined apart from all other relevant factors. The question is further complicated by the fact that the intellectual and emotional development of children is related not only to their schools but to a much broader social and educational context. Apart from the possible effects of a school's racial composition, the results of schooling also are affected by the social and economic circumstances in which children grow up, the quality of education provided in their schools, and the achievement and aspirations of their classmates. It is not a simple matter to separate elements which in reality are so closely interwoven. And the outcomes of education cannot be measured solely by children's grades in school—they extend also to their attitudes and experiences as adults.

There are a number of tested standards by which the effects of education can be assessed. Although none is absolutely accurate, each is a useful indicator of the outcomes of education. Most familiar is students' performance on achievement tests. Since achievement in other subjects depends strongly upon reading, tests of reading or verbal achievement are the usual measure of academic progress. The effects of education also include children's attitudes and aspirations. Thus measures have been devised to assess the schools' influence upon these factors.

The main purpose of education in America is to prepare students for future careers and lives as citizens. Occupational success now requires highly developed knowledge and technical skills, and public schools increasingly are expected to provide preparation for later education. One measure of their long-range effect, therefore, is a student's success in further education. Another is his relative occupational and economic attainment as an adult.

Marked differences exist between Negro and white Americans when measured by each of these standards. The disparities appear early in school. The verbal achievement of the average third grade Negro student in the Northeastern United States is about a year behind the average white in the same region.[1] Differences of the same magnitude exist in all other regions of the Nation.[2]

This disparity typically is greater in higher grades. The average third grade Negro student in the Midwest has a verbal achievement level approximately one year behind the average white student, but in the 12th grade the difference is nearly 3 years.[3] Commission studies in individual cities revealed that this pattern is general.[4]

Differences in achievement also are apparent on other standard tests. The U.S. Army administers tests to all inductees, the results of which depend upon ". . . the level of . . . educational attainment [and] . . . the quality of . . . education . . .".[5] The most recent test was given in 1965; it shows that while 18 percent of all whites failed, more than half of all Negroes failed.[6]

In spite of these differences in academic performance, Negro students generally express a desire for academic success.[7] Nevertheless they are less likely to have definite plans to attend college.[8] Moreover, Negro students more often feel that they will be unsuccessful later in life.[9]

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[1] *OE Survey* 223, table 3.11.3. All data from the *OE Survey* cited in this chapter are for metropolitan areas.

[2] *Ibid.*

[3] *Ibid.*

[4] In Boston, predominantly Negro schools made consistently lower median scores in reading achievement at every grade level tested than the predominantly white schools. In the higher levels, the difference in the achievement increased steadily. *Boston Study,* Section F–1, tables 2 and 3.

In Philadelphia differences in average reading achievement (expressed in grade level equivalents) between predominantly Negro and white schools increased from 0.8 in the second grade to 3.3 in the tenth grade. Scores from the School and College Aptitude Test for the eleventh grade, 1965–66, revealed a similar disparity: All schools over 90 percent Negro obtained school percentiles in the lowest quarter. Generally, the scores for predominantly white schools were consistently higher than those for the predominantly Negro schools; the highest Negro school ranked considerably below the white schools. (Test scores from Department of Research and Development, School District of Philadelphia.)

In Cleveland, a similar pattern was found. Nearly all-Negro schools start off at approximately one half of a grade level below white schools according to scores made in kindergarten on the Lee Clark Reading Readiness Test; at the ninth grade level medians for Negro schools typically were nearly two years behind white schools; grade equivalents for Negro schools ranged from 7.7 to 8.3, while for white schools the range was 8.3 to 10.1. By the twelfth grade, Negro schools were *all* below the city median, the white schools were all above the city median, and the lowest white school scored substantially higher than the highest score for the nearly all-Negro schools. (Scores obtained from Bureau of Educational Research, Cleveland Board of Education.)

In Atlanta, in 1965, in the Negro schools the median grade equivalent of the eighth grade in reading achievement was 3.9; in predominantly white schools it was almost 5 grades higher, 8.7 (Scores obtained from the Department of Research, Atlanta Public Schools). Similar disparities were noticed in test scores received from the public schools in Oakland, Milwaukee, and St. Louis.

[5] Office of the Surgeon General, U. S. Army, 21 *Supplement to Health of the Army* 2 (1966).

[6] *Id.* at 8.

There also are dissimilarities when further education is considered. Negroes less often are enrolled in college than whites and they are much more likely to be enrolled in high schools which send a relatively small proportion of their graduates to college.[10] Indeed, Negro students finish public school less often than whites and they are much more likely to attend schools with high dropout rates.[11]

Differentials also exist in the distribution of income and occupations in later life. Negroes with college education earn less on the average than high school-educated whites.[12] Negroes with some college education are less likely than similarly educated whites to be employed in white collar trades.[13]

These disparities arise from a variety of sources. In many respects they are related to factors which do not affect all children, such as racial discrimination in employment. Yet the outcomes of education for all students are shaped by a number of common factors.

One, the importance of which long has been recognized, is the educational and economic circumstances of a child's family. Students from differing circumstances, i.e., different social class backgrounds, bring to school differently developed attitudes and verbal skills. Both have a strong influence upon their performance in school and later in life.[14]

Similarly, the social class level of a given student's classmates usually has a strong bearing upon his performance and aspirations. A student who attends school with other youngsters who intend to go to college is more likely to desire this himself than if most of his schoolmates do not plan to attend college or even finish public school.[15]

Students also are influenced by the quality of education they receive in school. The elements of school quality generally thought to be important can be gauged in part by those factors which educators typically emphasize when they seek to improve the schools. One is reduced class size, permitting more attention to individual students. Another is the recruitment of more highly qualified teachers, which often requires improved salaries and teaching conditions. It also has been recognized that an important aspect of a teacher's qualifications is his attitudes and the level of performance he expects of his students. A fourth is the development of more advanced educational curricula and facilities, particularly in such areas as language and science.[16]

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[7] *OE Survey* at 196, table 2.43.2.

[8] *Id.* at 195, table 2.43.2.

[9] *Id.* at 199, table 2.43.3.

[10] *Id.* at 193, table 2.43.1.

[11] *Id.* at 196, table 2.43.2.

[12] U. S. Dept. of Labor, *The Negroes in the United States: Their Economic and Social Situation* 208, table IV B–13 (June, 1966). In 1963 nonwhite males with one or more years of college had a median annual income of slightly more than $4,000. In the same year the median annual income of white males with four years of high school was $5,000.

[13] *Id.* at 204, table IV B–10.

[14] Goldberg, "Factors Affecting Educational Attainment in Depressed Urban Areas" in *Education in Depressed Areas* 68, 87 (Passow ed. 1963).

[15] A study of high school seniors of the San Francisco Bay Area indicated that working class youth who aspired to attend college were more likely to be attending predominantly middle class schools. Kraus, "Sources of Educational Aspirations Among Working Class Youth", 29 *American Sociological Review* 867, 875, 877 (1964).

Finally, increasing numbers of educators believe that the racial composition of schools can affect the performance and attitudes of students. There is some evidence that the academic achievement of Negro students is lower in majority-Negro than in majority-white schools, and many educators have said that attending school almost exclusively with children of the same race has a negative effect upon the attitudes of both Negro and white students.[17]

In this chapter we consider the influence of these factors on the outcomes of education for Negro students. In attempting to make judgments there are three problems which must be borne in mind. First, it is difficult to compare a given characteristic of schools or students apart from other factors. The best teachers most often are found in schools whose students come from fairly affluent homes. These schools also tend to have the most advanced educational programs and the best educational facilities. Their students almost always are white. This makes it difficult to measure the effect of very high levels of school quality upon student bodies of other social or racial backgrounds. Similarly, the fact that most Negroes attend school almost exclusively with Negroes makes it difficult to assess the relationship between the racial composition of schools and student performance.

Second, the process of education is very complex, and simple causal connections cannot be drawn. It may seem reasonable, for example, to say that a student's motivation to learn directly affects his academic performance. Thus when it is found that students with strong motivation have high grades, it might be concluded that the motivation caused the performance. Undoubtedly, however, there is a complicated causal relationship in which levels of motivation and academic performance interact, each reinforcing the other.

Finally, the standards for measuring the outcomes of education have clear limitations. Although tests of verbal achievement do assess the basic skills needed for academic and occupational success, they are only a limited measure of a child's potential. Within these limitations, this chapter represents an effort to provide some new insight in an important area. If appropriate remedies for unequal educational opportunity are to be devised, it is important and perhaps crucial to know whether the racial composition of schools influences educational outcomes.

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[16] See, e.g., The Educational Policies Commission of the National Education Association and the American Association of School Administrators, *American Education and the Search for Equal Opportunity* (1965).

[17] *Id.* at 30. See also: Clark, "Educational Stimulation of Racially Disadvantaged Children" in *Education in Depressed Areas* 156 (Passow ed. 1963); Testimony of Miss M. Tillman, Boston public school teacher, *Hearing Before the U.S. Commission on Civil Rights, Boston, Massachusetts, October 4–5, 1966* (original transcript) at 88. [Hereinafter cited as *Boston Hearing*].

Social Class and the Outcomes of Education

The outcomes of education are strongly related to the social class origin of students. This relationship holds for both Negroes and whites. The educational attainment of an individual student is related both to his own social class and to the social class level of his classmates.

Individual Social Class

In the few years which separate their infancy from entry into school, children are exposed to profound formative influences. During those years verbal skills and styles of speech and thought are shaped, a child's view of himself develops, and his aspirations begin to form.

Most social scientists have rejected the proposition that "innate" ability is related to the race or social class of individual children.[18] Nor is there in America a well-defined culture of poverty, or a single life style associated with affluence. There are, however, some general characteristics associated with lives of relative poverty or affluence which are closely related to success or failure in school.[19]

Compare, for example, a child growing up in an economically deprived environment with another in a well-to-do neighborhood. The first is more likely to be poorly fed and clothed, and his family to be constantly concerned with meeting immediate material needs. In contrast to the advantaged child, the children of poverty often come to school undernourished and sometimes with serious, often undetected, medical problems.[20] Children from advantaged homes do not ordinarily suffer material deprivation or inadequate health care.

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[18] See generally: Hunt, *Intelligence and Experience* (1961); Pettigrew, *A Profile of the Negro American* 133–135 (1964).

[19] Miller, "The American Lower Classes: A Typological Approach" in *Mental Health of the Poor* 139 (Pressman ed. 1964); Deutsch, "The Disadvantaged Child and the Learning Process" in *Education in Depressed Areas* (Passow ed. 1963).

[20] See, e.g., Jeffers, *Three Generations,* Case Materials for the Child Rearing Study Sponsored by the Health and Welfare Council of the National Capital Area (Sept.–Oct. 1966); Jackson, *Poverty's Children,* Case Materials for the Child Rearing Study sponsored by the Health and Welfare Council of the National Capital Area (Sept.–Oct. 1966).

Poor children also must contend with their immediate neighborhood environment. Typically, their contacts and associations are much more restricted than those of more advantaged children. Disadvantaged children do not go outside their neighborhood as often as youngsters from more advantaged homes—whether it is to visit a museum, to travel beyond the city, or to go shopping.[21] Their neighborhoods also are typically disadvantaged. Calvin Brooks, a recent high school graduate, said of his neighborhood when he testified at the Commission hearing in Cleveland, Ohio:

> [It] is a slum . . . a very depreciated area, and you find all kinds of people . . . alcoholics . . . along the streets . . . .[22]

The chief vehicle of formal education is verbal and written communication. Children who have grown up in homes where reading is encouraged and books are commonplace come to school well prepared. They typically have a style of speech and habits of thought similar to those of their teachers.[23] Progress in school often is easy and they are likely to have facility with the tests used to measure their achievement, on the basis of which students often are placed in grades or ability groups. In contrast, children who grow up in poor neighborhoods often have styles of speech markedly different from those used in the schools or in written English, and are less likely to read before they enter school. Thus their early school experiences are with less familiar modes of communication, and they typically have greater difficulty with the tests used to measure achievement. The tendency for teachers to regard these children as deficient makes their adjustment to school more difficult.[24]

The differences between poverty and affluence extend beyond formal learning. In more affluent communities, schooling often is a basic concern of parents, who frequently are deeply involved in school affairs. Parents in poor neighborhoods are not usually any less concerned with education; indeed, they typically regard it as the chief avenue out of poverty.[25] Yet, it is often more difficult to find time to become involved in school affairs when the problems of material existence are pressing. Many parents do not participate because they do not believe that they can have much influence in school affairs. Indeed, some students of education have said that schools often are less responsive to poorly educated parents. Patricia Sexton, professor of sociology at New York University, points out in her study of social class and education that:

> . . . upper income groups have usually been in control of school boards and thereby in control of what goes on in the schools and

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[21] Deutsch, *Minority Group and Class Status As Related to Social and Personality Factors in Scholastic Achievement* 4 (1960).

[22] *Cleveland Hearing* 280.

[23] Deutsch, *op. cit. supra* note 19 at 174.

[24] Ravitz, "The Role of the School in the Urban Setting" in *Education in Depressed Areas* 15–21 (Passow ed. 1963).

[25] Jackson, *op. cit. supra* note 20 at 19.

> the methods of distributing rewards. In addition there is the fact that very little pressure is applied to the schools by lower-income individuals or groups representing them while upper-income groups tend to have great influence in the schools and to be active in school affairs.[26]

Finally, a child from an affluent neighborhood learns early that education is the chief vehicle of success in later life. He is likely to assume that he will attend college and may even define his goals less in terms of college than in terms of the professional education he desires after college. Such children are not likely to have serious financial barriers to their further education. They find it easy to entertain longer-range aspirations, for there is less pressure to earn money immediately.

Growing up in poverty, on the other hand, lends urgency to a child's ambitions and aspirations. He is more likely to want to find work as soon as possible, and infrequently has the independent means to pay for a college education. In a recent study of poverty one mother described a son who left school:

> Donald stopped school in the 8th grade because we didn't have food in the house and he also wanted a little money to spend. He said he wanted to stop school and go to work and help the family and that's what he did.[27]

In addition, although they may aspire to attend college, these children have few everyday contacts with college-educated adults. Thus while aspirations may be high, financial means are limited and models of achievement are few. As a recent study of families in poverty pointed out, the concrete plans of the poor often are at variance with their expressed aspirations:

> Many, if not most, low-income families find themselves straddling two ways of life as they try, or express the wish to be able to meet selected middle-class goals but find themselves bogged down and pulled back to "basics" by the demands of daily life.[28]

Individual Social Class and Performance

These differences have a close relationship to performance in school. The *Equality of Educational Opportunity* survey—one of the most extensive studies of student attitudes and performance ever made—found that the greatest proportion of the achievement differences among students are accounted for by the differences in their social class.[29]

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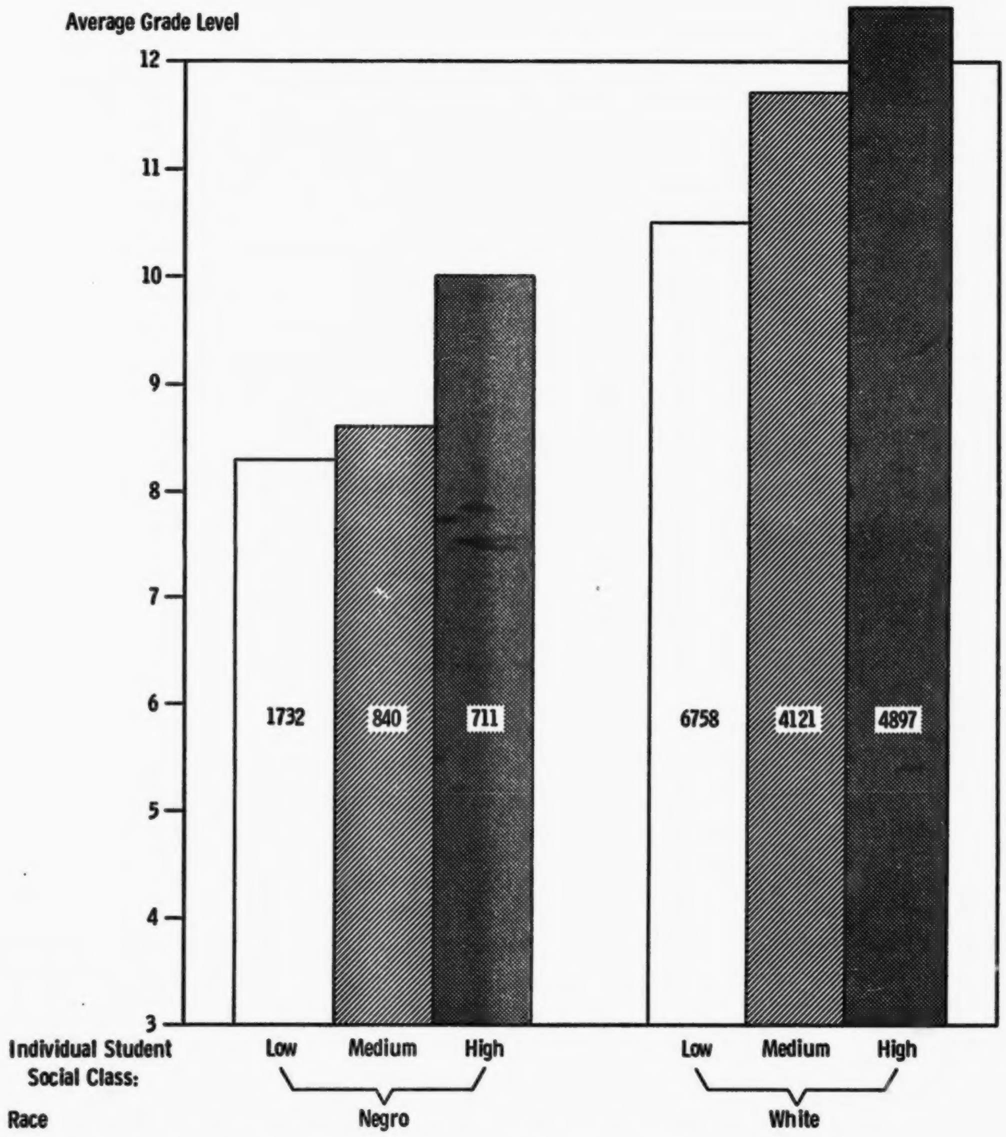
[26] Sexton, *Education and Income,* 7–8 (1961).
[27] Jeffers, *op. cit. supra* note 20 at 20.
[28] *Id.* at 1–2.
[29] *OE Survey* at 298–300.

Figure 1 depicts the average verbal achievement in grade levels of 12th-grade Negro and white students, ranked by a measure of the student's social class.[30] In this case the indicator of social class used is the level

Figure 1. Average Grade Level Performance, of Twelfth Grade Negro and White Students by Individual Student Social Class; Metropolitan Northeast



Note: The numbers in the bars represent the number of cases.
Source: USCCR analysis of *OE Survey* data. See App. C 1.

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[30] It should be noted that Fig. 1 is only an approximate measure of the achievement differences between children. None of the students' other experiences, such as the character of their schooling, have been taken into account. These same data, with appropriate adjustments for the sample design, are described in further detail in the *OE Survey* where the large regional differences and the degree of overlap in the distributions of Negro and white student test scores are shown. (*OE Survey* 219–275).

of the parents' education.[31] It shows that students of lower social class have distinctly lower average verbal achievement than those from more privileged backgrounds.

In a study of Richmond, Calif., performed for the Commission by Alan Wilson, Professor of Education at the University of California at Berkeley, the relationship between a student's social class and his school achievement was assessed. In this case the index of social class was parents' occupational levels. Wilson found that social class was the single factor most closely related to the academic achievement of children in the early grades.[32] This relationship was closer for white than Negro students, a result also found in the Office of Education survey.[33]

The attitudes and aspirations of students also are strongly related to their social class. One useful indicator of aspirations is the ambition for further education. Children from poorer backgrounds are less likely than children from well-to-do backgrounds to have concrete and definite plans for college. They also are less likely to have followed through on their aspirations by contacting a college official or reading a college catalogue.[34] Wilson also found a strong association between aspirations and individual students' social class.[35]

These differences do not suggest that to be poor in America automatically implies failure in school. They do suggest that, on the average, the social class of a student has a strong relationship to his academic success and aspirations. This is of particular significance for Negro students. In America a greater proportion of Negro than white children are poor, and thus the educational damage that stems from poverty is proportionately greater for the Negro than for the white population.

The Social Class Composition of Schools

The social class level of a student's classmates also has an important relationship to the outcomes of his education. From the early grades through senior high school, children increasingly are open to the direct influence of their peers. Both the Commission's Richmond study and the *Equality of Educational Opportunity* survey conclude that while family status is of great importance for early school achievement, in the later grades the influence of family gives way more and more to the influence of students' peers.[36] Dr. Charles Pinderhughes, a psychiatrist who testified at the Commission's Boston hearing, described the importance of the environment created by the student body:

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[31] With the exception of Alan Wilson's study, all text references to social class which follow are based upon the average educational attainment of a student's parents. The tables refer to "Low", "Medium", and "High": these headings refer respectively to less than high school, high school graduate, and more than high school graduate. Where the text refers to disadvantaged students, this designates the "Low" category. "Social class" is used in the text as a convenient designation for measures of relative educational disadvantage.

[32] Wilson, *Educational Consequences of Segregation in a California Community*, in *app. C–3* (vol. II) of this Report [Hereinafter cited as *Wilson app. C–3*].

[33] *OE Survey* 300, 301, table 3.221.3, 6.

[34] *App. C–1,* tables 3.3 and 3.4.

[35] See *Wilson app. C–3* at 193–199.

> . . . [W]hat the pupils are learning from one another is probably just as important as what they are learning from the teachers. This is what I refer to as the hidden curriculum. It involves such things as how to think about themselves, how to think about other people, and how to get along with them. It involves such things as values, codes, and styles of behavior . . . .[37]

Social Class Segregation Among Schools

A poor child is not only likely to have lower verbal achievement and aspirations himself, but he is very likely to attend school where most of the students have similar achievement and aspirations.[38]

An example of these differences in student environment is depicted in Figure 2. It summarizes the average verbal achievement of the 12th grade Negro and white students in schools of different social class compositions.[39] The figure shows that the average 12th grader's achievement in schools with lower social class levels is well below the average achievement level in more advantaged schools.

The distribution of student attitudes follows a similar pattern. Children raised in poverty are more likely than privileged children to attend school with students who feel that they will not be successful in life, and are less likely to have classmates with definite college plans.[40]

Norman Gross, a Rochester, N.Y., high school teacher who testified at the Commission's hearing there, described the differences in students' aspirations between Madison High School—attended mostly by poor children—and a suburban school:

> . . . [O]ne of the Madison youngsters said: "[A]t Madison we asked a question, 'are you going to college?'" At Brighton the question always is "what college are you going to."[41]

One particularly sensitive indicator of a student's attitudes is whether or not he has the sense that he can affect the direction of his own life.

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[36] *OE Survey* 304; See *Wilson app. C-3* at 174.

[37] *Boston Hearing* at 138.

[38] For white students see *app. C-1* tables 8.6 and 8.7 at 137–138. For Negro students see *Id.* tables 4.1 at 66, table 3.2 at 59.

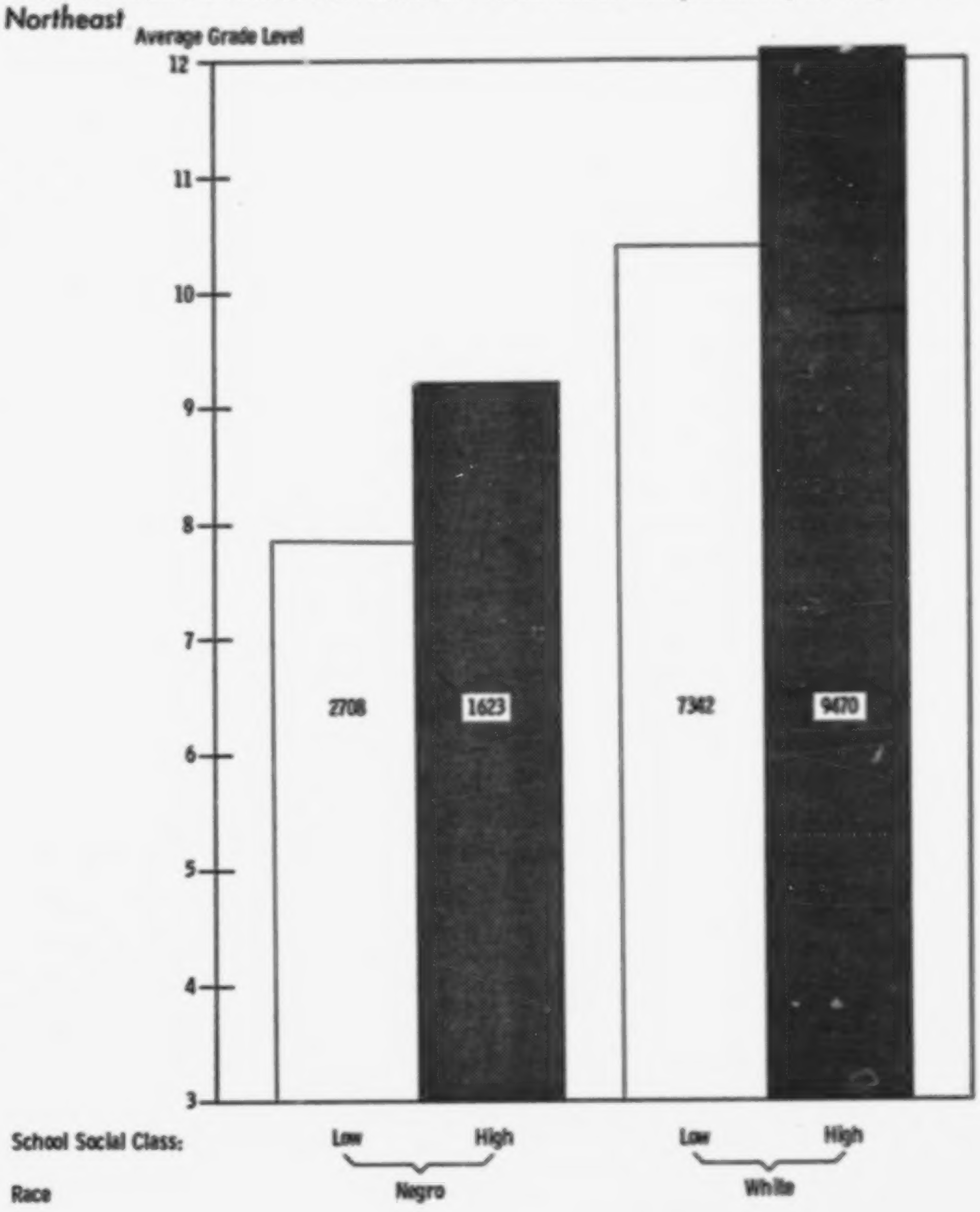
[39] *Ibid.*

[40] For Negroes see *Id.* table 4.2 at 67; for whites see *id.* table 8.6 at 137.

[41] *Rochester Hearing* at 130.

It has been said that powerlessness—the feeling that one's life is not under one's own control—is typical of people in poor neighborhoods.[43] Previous studies have shown a definite relationship between the level of an individual's performance and the presence or absence of the sense that

Figure 2. Average Grade Level Performance of Twelfth Grade Negro and White Students in Schools of Different Social Class Compositions; Metropolitan Northeast



Note: The numbers in the bars represent the number of cases.
Source: USCCR analysis of *OE Survey* data. See App. C 1.

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[43] See, *e.g.*, Harlem Youth Opportunities Unlimited, Inc., *Youth in the Ghetto* 10–11 (1964).

he can affect his destiny.[43] This attitude also varies with the social class level of the school.[44] Students in school with a majority of disadvantaged students more often are exposed to other students who feel they cannot affect their own destiny.

School Social Class and Performance

The effect of the social class composition of schools upon student performance can best be seen if the average social class of the entire student body is distinguished from the social class of individual students. Thus the performance of individual students of a given social class can be examined in schools with different social class compositions.

These relationships are examined in Figure 3 where the social class level and race of individual students, and the social class composition of the schools they attend are shown.[45] The first set of bars (1 and 2) compares the average grade level performance of Negro students from homes where parents have less than a high school education, in two different types of schools: (1) those in which a majority of the students have parents with similarly low levels of education, and (2) those where a majority of the students have parents with at least a high school education. When the two bars are compared it is seen that the average performance of disadvantaged Negro students is better when the social class level of the student body is higher. As the figure also shows (7 and 8), this relationship is true for disadvantaged white students as well.

The performance of Negro students from more advantaged backgrounds in schools of different social class compositions also is compared. The third set of bars (5 and 6) depicts the average verbal achievement level of more advantaged students in schools of the same social class levels just described. These bars show that the performance of more advantaged students also varies with the social class level of the student body. This tendency holds for white students as well (11 and 12).

In Wilson's study of Richmond students, a marked relationship also was found between the social class composition of schools and student

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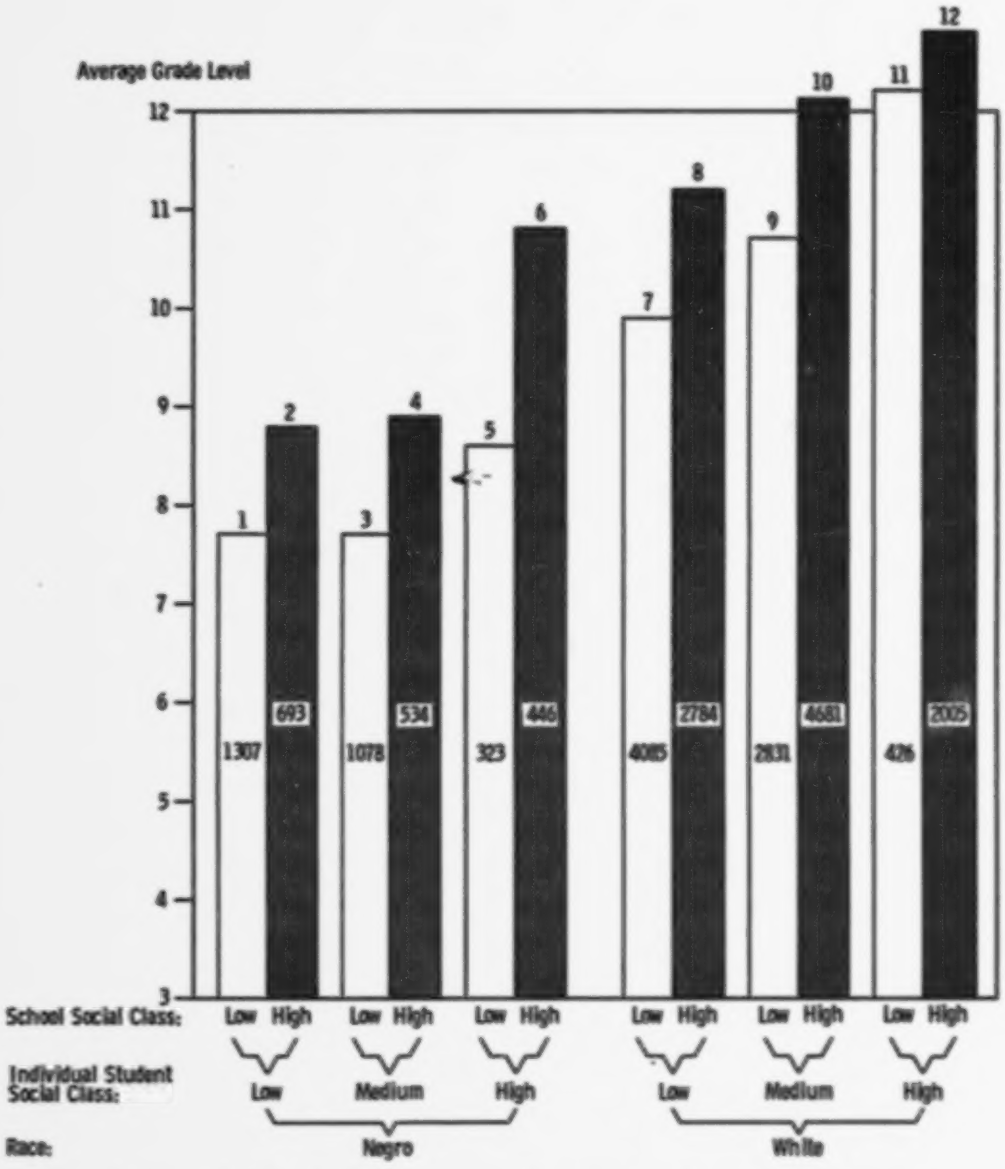
[43] Some studies have been undertaken to inquire into the relationship between feelings of powerlessness and the acquisition of knowledge and information. See, e.g., Seeman and Evans, "Alienation and Learning in a Hospital Setting", 27 *American Sociological Review* 772 (1962). In a hospital study of tuberculosis patients, Seeman and Evans found that those with the strongest feelings of powerlessness had less knowledge about tuberculosis than those who were not so alienated. Seeman, "Alienation and Social Learning in a Reformatory", 59 *American Journal of Sociology*, 270 (1963). In a reformatory setting, inmates with greater feelings of powerlessness learned relatively little when given information about parole, even though it might have helped shorten their confinement. All had over 100 IQ and at least 9th grade education. There was no correlation between IQ and alienation.

[44] *App. C-1*, table 3.5 at 62; *OE Survey* 200, table 2.43.4; see also Havighurst, "Urban Development and the Educational System" in *Education in Depressed Areas* 24 (Passow ed. 1963).

[45] The social class level of the school is measured by the average parents' education of all students in the school. This measure is used in all figures and tables dealing with school social class. For a discussion, see *app. C-1*, 37–39; 40–41.

Figure 3. Average Grade Level Performance of Negro and White Twelfth Grade Students by Social Class Level of the School and the Social Class Origin of the Student; Metropolitan Northeast



Note: The numbers in the bars represent the number of cases.
Source: USCCR analysis of *OE Survey* data. See App. C 1.

performance. Richmond students—regardless of their own social class—were more likely to perform well in predominantly middle class than in predominantly lower class schools.[46]

The Richmond study also measured the relative importance of individual and school social class for white and Negro students separately. It was found that the student environment had a stronger relationship to the performance of Negro than white students. White students' performance—although still strongly related to the social class level of their fellow students—was even more closely related to family background than that of Negroes. Wilson concluded:

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[46] *Wilson app. C–3* at 182–84.

> . . . the family has much more influence on the achievement of white students than Negro students; the latter are more sensitive to variation in the school milieu.[47]

This relationship was assessed on a national scale by the *Equality of Educational Opportunity* survey. Its findings were the same as those in the Richmond study. The survey concluded that the "environment provided by the student body . . . has its greatest effect on those [students] from educationally deficient backgrounds." [48]

Wilson's study also weighed the effects of the social class composition of schools upon the same students over their entire school careers. It was found that the influence of individual social class is of great importance for student performance in the early elementary grades, and the social class composition of schools was of little significance. Over the course of the first eight school years, however, the cumulative effect of the social class composition of the elementary schools these children attended increased sharply. In the eighth grade it was as significant for student performance as individual social class.[49]

This pattern generally is the same when student attitudes are considered. The most striking comparison appears when college aspirations and plans are examined. Figure 4 compares the relationship between students' definite plans to attend college and the social class composition of their schools.[50] The first set of bars (1 and 2) compares the proportion of disadvantaged Negro students with definite plans to attend college in schools with either low or high social class compositions. This comparison shows that their college plans are more frequent in schools with a higher social class level. Relatively advantaged Negro students in schools of lower social class levels (5 and 6), are seen to be less likely to plan to attend college than similar students who are in school with a majority of more advantaged students. Regardless of their individual social class or race, students are more likely to have definite plans to attend college when they are in schools of higher social class compositions.

There is, then, a strong relationship between the attitudes and achievement of students and the social class composition of their schools. Disadvantaged students—especially Negroes—are more strongly influenced by the student environment than advantaged students. This relationship grows stronger over time. Although family and school social class factors vary in their individual importance at different grade levels, their combined influence always is great.

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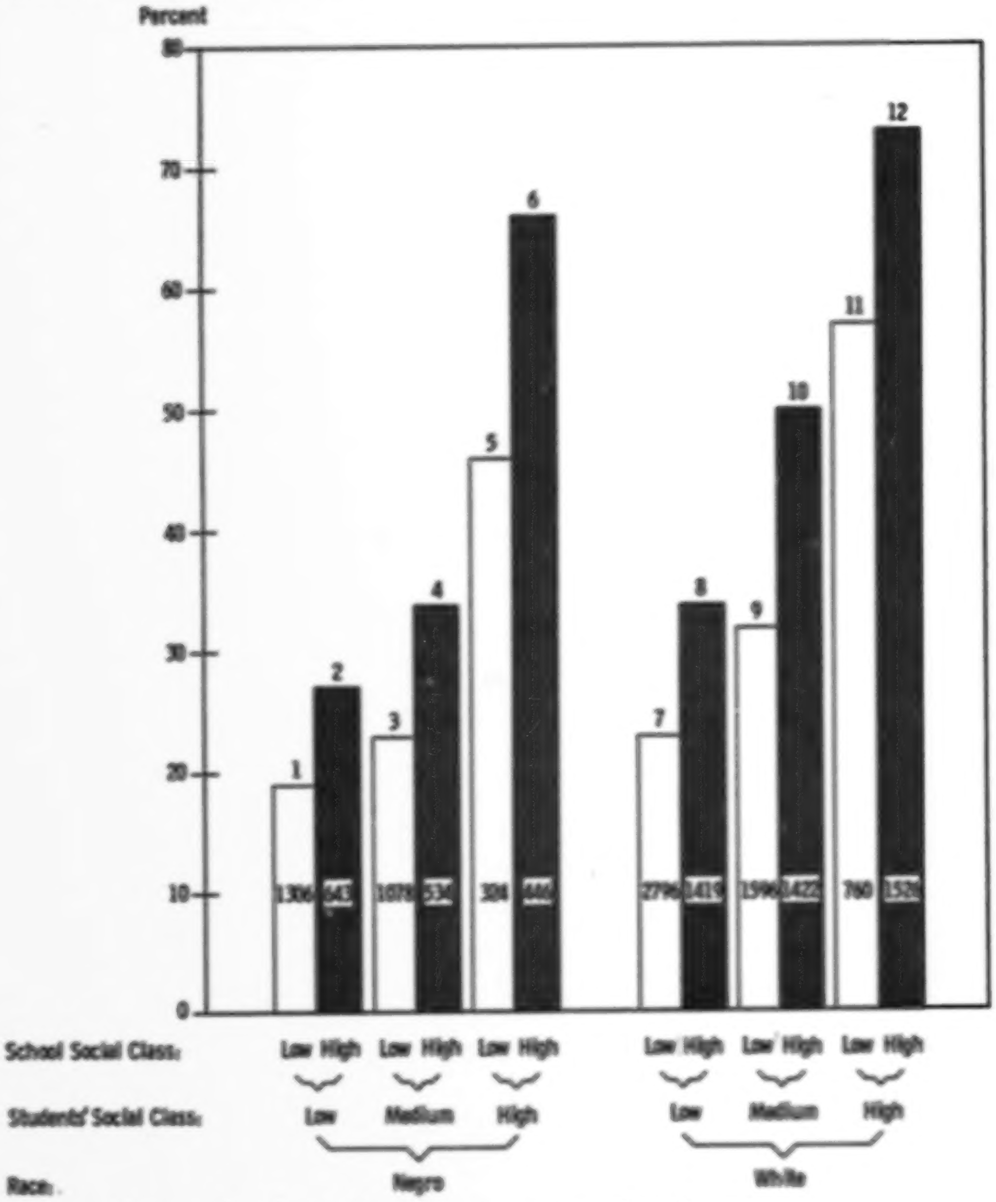
[47] *Id.* at 187.

[48] *OE Survey* 304.

[49] *Wilson app. C–3*, table 21 at 184.

[50] See *app. C–1*, table 3.2 at 59.

Figure 4. Proportion Twelfth Grade Negro and White Students With Definite College Plans by Students' Social Class Origin and Social Class Level of the School; Metropolitan Northeast



Note: The numbers in the bars represent the number of cases.
Source: USCCR analysis of *OE Survey* data. See App. C 1.

The Question of Selection

The data examined above suggest that the student environment has a connection with student performance. They tend to confirm the maxim that students learn as much from each other as from their teachers. Robert J. Havighurst, Professor of Sociology at the University of Chicago, in reviewing existing research on this question, recognized the problems of attributing cause. He concluded:

> . . . [T]he consensus of students of the sociology and psychology of education is that the fact of attending a lower class school does have something to do with the lower academic achievement of the pupils from that school.[51]

Havighurst and others have noted that the relation between school social class and student performance may be the result of a selective factor.[52] That is, lower class students in predominantly middle class schools may be there because their parents, viewing certain schools as better, deliberately enrolled their children in those schools. These students would be likely to be more highly motivated and to have appreciably higher verbal achievement when they entered school. If this were true, the connection between student performance and school social class would be put in doubt.

Wilson's study examined this question. Because his research dealt with the same students over time, it was possible to consider the problem of self-selection. To consider the selective factor, differences in the students' first grade verbal achievement were taken into account when inspecting the effects of school social class upon later school achievement.[53] The study found that there was still a strong effect of school social class, apart from the students' early achievement. Wilson concluded that:

> . . . allowing for variation in primary-grade mental maturity, the social class composition of the primary school has the largest independent effect upon the sixth grade reading level.[54]

Factors other than selection—in the student's school experience and environment—must be involved.

It is difficult to specify precisely the ways in which the student environment affects performance and attitudes. There is a complicated relationship between the standards set by the performance and attitudes of a student's schoolmates and his own performance and attitudes. It seems reasonable to suggest, however, that at least two elements are present.

First, different backgrounds influence what students see as attainable goals. A disadvantaged student in school mostly with other disadvantaged students is exposed primarily to youngsters for whom immediate work and earnings are the most concrete need. While it may be easy for a given student to express his desire for a college education, there is little around him which suggests that his own friends and social equals regard such a thing to be possible. Since, as they move through the grades, students increasingly measure their behavior by the standards set and accepted by their friends and associates, such a student is unlikely to follow through on his aspirations for college.[55]

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[51] Havighurst, *op. cit. supra* note 44 at 32.

[52] *Ibid.*

[53] See *Wilson app. C–3,* table 17 at 187.

[54] *Id.* at 187.

Second, a similar process is probably involved in academic achievement. Students from poor backgrounds do not perform as well in school—even in the early grades—as more advantaged students. As was shown earlier, this performance gap increases as students move to higher grades. Students in schools where early and continuing academic difficulty are typical are likely to suffer from the cumulative disadvantage of their classmates. The students provide each other both with academic standards and with varying degrees of academic interchange. Where the majority of students have low achievement, others will be likely to follow suit.

This was illustrated in testimony by David Jaquith, President of the Syracuse Board of Education, at the Commission hearing in Rochester. Explaining the positive effects of a transfer of disadvantaged students from Madison Junior High School to Levi, a junior high school which had a more advantaged student body, he said:

> . . . at Madison Junior High School, if you cooperated with the teacher and did your homework, you were a "kook."
>
> At Levi Junior High School, if you don't cooperate with the teacher and don't do your homework, you are a "kook." Peer pressure has tremendous effect on the motivation and motivation has a tremendous effect on achievement.[56]

* * *

In summary, there is a strong relationship between student and school social class, and performance and attitudes. The social class composition of schools is the single most important school factor affecting student performance and attitudes. As the *Equality of Educational Opportunity* survey concluded:

> . . . the inequalities imposed on children by their home, neighborhood, and peer environment are carried along to become the inequalities with which they confront adult life at the end of school.[57]

Social Class and Racial Composition

Thus far the racial composition of schools has not been taken into account. Does it have a relationship to performance which is distinct from that associated with the social class composition of schools?

Research has not yet given clear answers to this question. While serious performance differences between predominantly Negro and pre-

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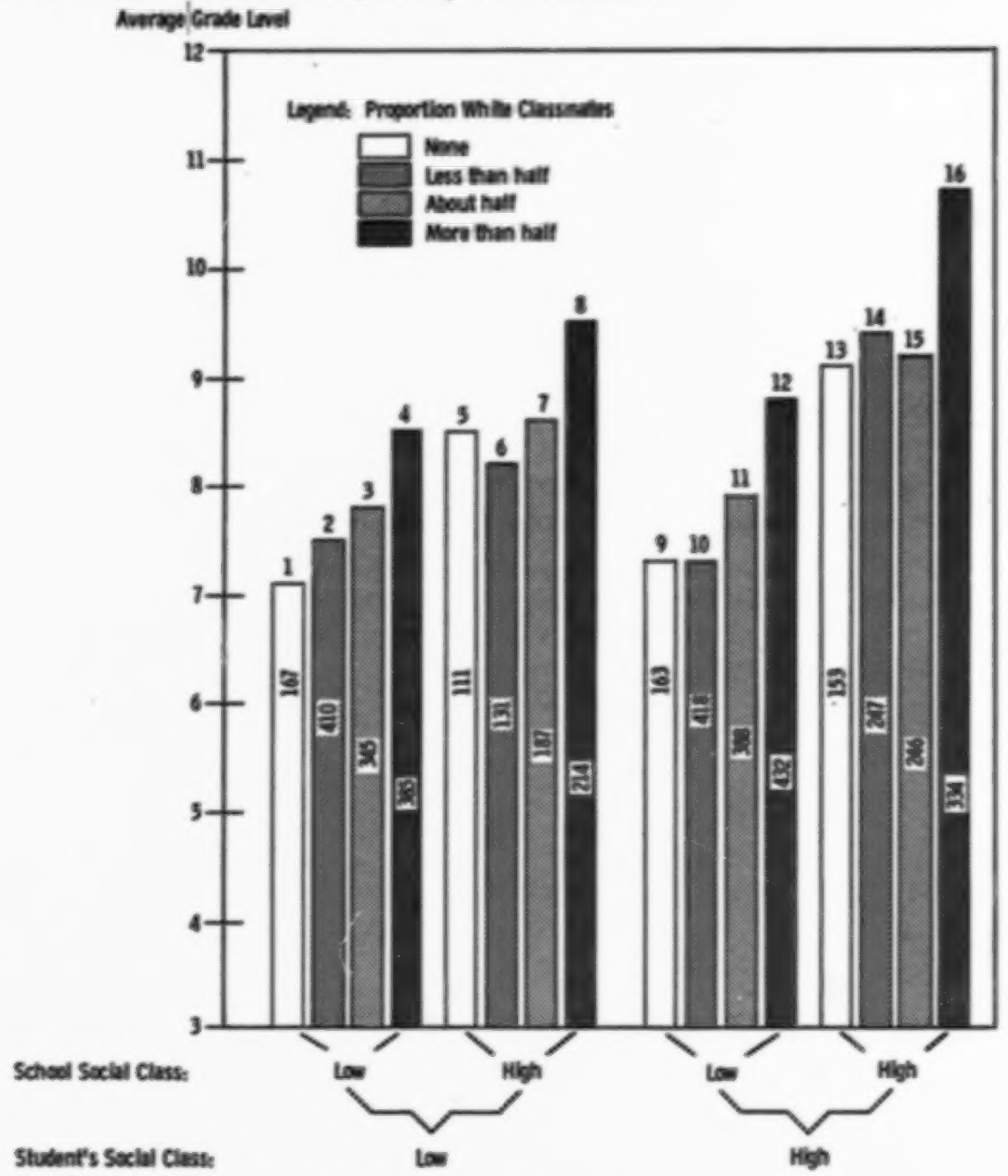
[55] See note 36, *supra;* Alexander and Campbell, "Peer Influences on Adolescent Aspirations and Attainments," 29 *American Sociological Review* 568 (1964). See also *Wilson app. C–3* at 181.

[56] *Rochester Hearing* 473–474.

[57] *OE Survey* 325.

Figure 5. Average Grade Level Performance of Twelfth Grade Negro Students by Individual Social Class Origin, Social Class Level of School and Proportion White Classmates Last Year; Metropolitan Northeast



Note: The numbers in the bars represent the number of cases.
Source: USCCR analysis of *OE Survey* data. See App. C 1.

dominantly white schools are evident, there has been disagreement on whether the differences are due entirely to factors associated with the social class level of schools or whether racial composition is an important additional factor.[58]

Figure 5 depicts all three dimensions of the relationship in question. Two—the social class level of individual Negro students and the social class level of their schools—already have been discussed. The third, which is depicted here for the first time, is the racial composition of classrooms.[50]

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[58] *Id.* 307–312. See *Wilson app. C–3* at 182–187.

Comparisons among the first four bars show that when relatively disadvantaged Negro students are in class with a majority of similarly disadvantaged white students (4), their performance is higher than when they are in a class with a majority of equally disadvantaged Negroes (1). A similar relationship obtains for more advantaged Negro students, when those in school with similarly advantaged Negroes (13) are compared with those in school with similarly advantaged whites (16).

When disadvantaged Negro students in school with more advantaged Negroes are considered (5), there also is a performance improvement. Yet only a small proportion of the Negro population is middle class, and disadvantaged Negroes generally must attend school with whites if they are to be in school with a majority of more advantaged students. The combined effects of social class integration and racial desegregation are substantial. When disadvantaged Negro students are in class with similarly situated whites (4), their average performance is improved by more than a full grade level. When they are in class with more advantaged white students (8), their performance is improved by more than two grade levels.

These comparisons suggest a relationship between the performance of Negro students and the racial composition of classrooms. They do not, however, explain it. There are a number of possible explanations.

First, there may be differences in the quality of education offered in majority-Negro and majority-white schools which account for the higher average Negro performance in majority-white schools.

Second, it may be that there is a process of selection involved, whereby only initially more able Negro students attend majority-white schools.

Finally, there may be student environment factors directly connected with racial composition which relate to the attitudes and performance of Negro students. These possibilities, which are not mutually exclusive, will be discussed in succeeding pages.

School Quality and Student Performance

Performance differences between schools with predominantly Negro and predominantly white enrollments often have been attributed to disparities in the quality of education between such schools. It is certainly true that the quality of a school's curriculum, the character of its facilities, and the attitudes and qualifications of its teaching and administrative staff can affect the attitudes, morale, and performance of students.

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[50] With the exception of the section on school quality, all tabulations involving racial composition refer to the racial composition of classrooms. For a fuller discussion, see *app. C–1 at* 40–42.

This section, however, is addressed to a more specific problem. Differences in the performance of Negro students have been shown which relate to the social class composition of their schools and—additionally—to their racial composition. Certain differences in accepted measures of school quality also exist between predominantly Negro and predominantly white schools. Do existing differences in school quality account completely for the performance differences which relate to the social and racial composition of schools?

This section first presents a discussion of those differences in school quality which appear to have some relationship to student performance. These differences then are compared with the achievement and attitude differences which appear to relate to the social class and racial composition of schools. In this way it can be determined whether the differences in school quality explain the relationship between achievement and the racial composition of schools?

The Extent of Disparities

Three aspects of the quality of education were mentioned earlier: educational facilities, including language and science laboratories; curriculum, including the presence or absence of specialized study in particular subjects; and the attitudes and qualifications of teachers.

Facilities

There are some noticeable differences in the quality of school facilities available to Negro and white students in the Nation's metropolitan areas. The *Equality of Educational Opportunity* survey reported that although Negro and white children were equally likely to attend schools with libraries, whites more often attended schools with more library volumes per student.[60] White students also were more likely to attend schools which had science laboratories.[61]

Educational Program

Similar disparities existed in the educational offerings available to Negro and white students. The survey reported that whites more often were in schools which had advanced courses in particular subjects, such as science and language. They also were more likely to be in schools with fewer pupils per teacher.[62] In most cities studied by the Commission it was found that schools with nearly all-Negro enrollments were overcrowded more often than nearly all-white schools. This often resulted in the establishment of classes in temporary structures—sometimes in the basements of churches or other public buildings.[63]

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[60] *OE Survey* 78, table 2.21.13.
[61] *Id.* at 73, table 2.21.8.
[62] *Id.* at 70, table 2.21.4; 100, table 2.24.2.

Teachers

Teachers are the most important element in the quality of education schools offer. The extent of their experience, the quality of their training, and their attitudes toward students all are important.

The survey found no significant national differences in the educational attainment, as measured by years of school completed, of teachers in majority-Negro and majority-white schools. Negro students, however, were exposed less often than white students to teachers whose college major was in an academic subject—mathematics, science, or literature.[64]

Negro students also were more likely than whites to have teachers with lower verbal achievement levels. Part of the survey involved a vocabulary test administered to teachers. The results of the test in the Metropolitan Northeast, for example, show that in those majority-Negro classrooms included in the sample almost none of the 12th grade students had faculties which scored in the highest range of this test.[65] Commission studies in various cities resulted in an analogous finding. In those cities which administered teacher examinations, such as St. Louis, Atlanta, and Philadelphia, the faculties of nearly all-Negro schools had lower average test scores than faculties in all-white schools.[66]

Nationally the survey found that Negro and white students had equally experienced teachers. Differences were revealed, however, in Commission investigations in specific cities. In Oakland, for example, more probationary teachers were found in nearly all-Negro schools than in nearly all-white schools.[67] In Philadelphia, a greater proportion of substitute teachers was found in nearly all-Negro schools.[68] In some cities—such as Boston and Milwaukee—there has been higher teacher turnover in schools with increasing Negro enrollment than in nearly all-white schools.[69]

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[63] For example, nearly half of the majority-Negro schools in Philadelphia in the 1965–66 school year were overcrowded (i.e., the average percentage enrollment of capacity exceeded 109%). Approximately one third of Philadelphia's nearly all-white schools were similarly overcrowded. (*Philadelphia Study,* app. A–3); in Cleveland, Ohio, between 1957 and 1964, 95 percent of all units rented to relieve overcrowding were at nearly all-Negro schools. (*Cleveland Study,* Section Ba). In the 1965–66 school year a greater proportion of mobile units in Chicago were in use in Negro schools. Of all mobile units used in that school year, 68% were at nearly all-Negro schools while only 20% were at nearly all-white schools. (Information obtained from the U. S. Office of Education).

[64] *OE Survey* 140, table 2.33.8.

[65] See *app. C–1,* table 7.18 at 121.

[66] *Atlanta Study* 66, table 18; 41; *Philadelphia Study,* Part III B; Reisner, *Equality of Education Opportunity in St. Louis* at 48, 54 (unpublished report to the U.S. Office of Education, July, 1965).

[67] About one third of all Oakland teachers are probationary—i.e., have taught less than three years. There is a higher proportion of probationary teachers in elementary schools with higher Negro enrollment. *Oakland Study* 70.

[68] *Philadelphia Study,* Part III B.2.b., table 13.

Marked national differences in teachers' attitudes about remaining in their present schools were found in the survey. Negro students were more likely than whites to have teachers who preferred not to remain in their present school.[70] One writer has commented: ". . . in many cities across the country the depressed areas have been the 'Siberias' of the local school system . . ." [71]

On the other hand, Negro students more often than whites had teachers who said they preferred to teach children from a variety of social backgrounds and their teachers more often expressed liberal racial attitudes.[72]

School Quality and Social Class Composition of Schools

Do such differences in the quality of education available to Negro and white children explain the relationship reported earlier between the social class composition of schools and student performance?

Two composite measures of educational quality were devised to examine this question. The use of composite measures makes it possible to take into account simultaneously those school quality differences which show some general relation to achievement. Each composite measure permits comparison of student achievement and attitudes in schools which have high or low levels of the educational quality being measured. One relates to school facilities and educational program and the other deals only with teacher qualifications and attitudes.[73]

Facilities and Curriculum

Table 1 depicts the achievement of disadvantaged Negro students, the social class level of their schools, and variations in the quality of educational program and facilities in their schools.[74] It thus permits an assessment of the relationship between differences in school quality and student

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[69] ". . . As the percentage of non-white pupils increases, there is a general increase in teacher turnover rates." *Milwaukee Study* Part III.b. at 2–3.

". . . There is a high degree of relatedness between the frequency of staff change and the degree to which a school has a high non-white enrollment." *Boston Study*, "Staff Quality and School Quality: Selected Characteristics" at 2.

[70] *OE Survey* 156, table 2.34.8.

[71] Ravitz, *op. cit. supra* note 24 at 19.

[72] *OE Survey* 168, table 2.35.2.

[73] The index of school facilities and curriculum is composed of the following measures: science laboratories, comprehensiveness of curriculum, and extracurricular activities. For further details see *app. C–1*, sec. 1.5 at 43–44.

The index of teacher qualifications is composed of the following teacher measures: educational level, type of college major, desire to continue teaching in current school, and years teaching experience. For further details see *app. C–1*, sec. 1.5 at 44–46.

[74] See *app. C–1*, table 7.4 at 107.

TABLE 1.—SCHOOL QUALITY, STUDENT PERFORMANCE, AND THE SOCIAL CLASS COMPOSITION OF SCHOOLS. (*Average verbal achievement test scores, 12th grade, by school quality index, parents' education, and school average of parents' education, expressed in grade level equivalents; Metropolitan Northeast*)

Individual's parents' education (social class of students)	School average: Parents' education (social class level of school)	School quality index	Achievement level I
Less than high school (low).	Less than high school graduate (low).	Low	7.4
		Medium	7.8
		High	8.2
	High school graduate or more (medium to high).	Low	8.5
		Medium	8.6
		High	9.2

Source: USCCR analysis of *OE Survey* data. See App. C1.

achievement. When column I is read down, it is seen that there are some variations in students achievement which relate to variations in the quality of educational facilities and programs.

The table also shows that improvements in the achievement of disadvantaged Negro students when in school with a majority of advantaged students was not explained by variations in school facilities and curriculum. This suggests that performance variations associated with differences in the social class composition of schools are distinct from variations in school facilities and curriculum. Yet the magnitude of the differences must be remembered. Present differences in school curriculum and facilities in metropolitan areas are noticeable, but not massive. This analysis only weighs existing differences in school quality.

Teachers

Consistent differences also appear when the social class background, qualifications, and attitudes of teachers are considered. Table 2 weighs the relationship between differences in teacher quality and student achievement. It also permits comparison of these differences with those associated with variations in the social class composition of schools.

TABLE 2.—TEACHER QUALITY, STUDENT PERFORMANCE, AND THE SOCIAL CLASS COMPOSITION OF SCHOOLS. (*Average grade level performance of low-social-class 12th grade Negroes, social-class level of the school and teacher quality; Metropolitan Northeast*)

Individual's parents' education (social class of students)	School average: parents' education (social class level of school)	Teacher average: Index	Grade level performance
Less than high school graduate. (low)	(A) Less than high school graduate. (low)	(1) Low	7.7
		(2) High	8.1
	(B) High school graduate or more. (medium to high)	(1) Low	8.6
		(2) High	8.9

Source: USCCR analysis of *OE Survey* data. See App. C1.

The table shows that differences in the qualifications and attitudes of teachers have a regular relationship to student performance. Consider, for example, the first row (A) which depicts disadvantaged Negro students in schools with a majority of other disadvantaged students. When such students have less qualified teachers (1), they do less well than when their teachers are more qualified (2). The same relationship holds when disadvantaged Negro students are in schools with a majority of advantaged students (B). At each school social class level, students with more qualified teachers perform at higher levels than those with less qualified teachers.

When the variations in teacher quality are held constant, however, differences associated with school social class still appear. Compare, for example, disadvantaged Negro students with equally well qualified teachers, in school either with a majority of disadvantaged students (A2), or a majority of more advantaged students (B2). Those with a more advantaged student body perform at a higher level.

An even more severe comparison of teacher quality and school social class is possible. A comparison of rows A2 and B1 weighs improved teacher quality in majority-disadvantaged schools against improved social class in schools with poorer teachers. The effects of school social class outweigh those of teacher quality.

There is, then, a pronounced relationship between the qualifications of teachers and the performance of students. It appears to be consistent for Negro students of all social class levels in schools of different social class compositions. The relationship between teacher qualifications and student performance, however, is not as consistently strong as the relationship between student performance and the social class composition of schools. Although teacher quality is important, when taken into account it does not alter the significance of the relationship between the social class composition of schools and the achievement of Negro students.

School Quality and Racial Composition

The remaining question is whether, when the racial composition of schools is taken into account, the results differ from those related to social class.

When facilities and curriculum were considered, they showed a limited association with student achievement in schools of differing racial compositions.[75] When teacher quality is considered, however, there are relationships with student performance which vary with the racial composition of classrooms.

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[75] *Ibid.*

The performance of disadvantaged Negro children in majority-Negro classrooms is analyzed in Table 3.[76] When column I is read down it is possible to compare the relationship between different levels of teacher quality and the verbal achievement of disadvantaged Negro students. In row A they are in classes with a majority of similarly disadvantaged Negro students and in row B with a majority of more advantaged Negro students. The comparison in row A shows that higher teacher quality is associated with improvements in student performance in classes with a majority of disadvantaged Negro students.

TABLE 3.—TEACHER QUALITY AND STUDENT PERFORMANCE IN MAJORITY-NEGRO SCHOOLS. (*Average achievement in grade levels of lower social class 12th grade Negro students in majority-Negro schools, by teacher quality and school social class; Metropolitan Northeast*)

Individual's parents' education (social class of students)	School average: Parents' education (social class level of school)	Teacher average: Index	Achievement level I
Less than high school (low)	(A) Less than high school graduate. (low)	(1) Low	7. 3
		(2) High	7. 7
	(B) High school graduate or more. (medium to high)	(1) Low	7. 8
		(2) High	8. 6

Source: USCCR analysis of *OE Survey* data. See App. C1.

A comparison of row A2 with B1 indicates that having highly qualified teachers or attending school with more advantaged Negroes may be of about equal importance to disadvantaged children. Children lag severely when both factors are missing. When either factor is present, children perform better. When both factors are present, children perform at an even higher level. The distinct effects of teacher quality and social class compositions reported in the earlier consideration of social class, then, hold in majority-Negro schools.

When more advantaged Negro students are considered, there also is a relationship between teacher quality and student performance. Yet for these students the effect of social class composition is even greater than the effect of teacher quality.[77]

Do similar results exist in majority-white schools? Table 4 presents the same comparisons, except that the schools in this case are majority-white.[78] Reading down column I reveals that the student achievement differences associated with variations in teacher quality are virtually nonexistent in four of the six comparisons (A, B, C, and D). This suggests that improvements in teacher quality have less relation to the performance of Negro students in majority-white schools than they do in majority-Negro schools.[79]

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[76] See *app. C–1*, table 7.16 at 119.

[77] *Ibid.*

[78] See App. C1, Table 7.16 at 119.

The effect of differences in the social class level of schools does not change when the racial composition of schools varies. The effect of differences in teacher quality varies, however, and is smaller for Negro students in majority-white than majority-Negro schools.

What is the relative importance of teacher quality and racial composition? Table 5 provides direct comparison of these for disadvantaged Negro students.[80] Reading across rows A1 and 2 and B1 and 2 reveals that at each level of teacher quality and school social class, the perform-

TABLE 4.—TEACHER QUALITY AND STUDENT PERFORMANCE IN MAJORITY-WHITE SCHOOLS.—*(Average achievement in grade levels of 12th grade Negro student in majority-white schools, by teacher quality, individual social class, and school social class; Metropolitan Northeast)*

Individual's parents' education (social class of students)	School average: Parents' education (social class level of school)	Teacher average: Index	Achievement level I
Less than high school. (low)	(A) Less than high school graduate. (low)	(1) Low	8.5
		(2) High	8.6
	(B) High school graduate or more. (medium to high)	(1) Low	9.5
		(2) High	9.5
High school graduate. (medium)	(C) Less than high school graduate. (low)	(1) Low	8.5
		(2) High	8.6
	(D) High school graduate or more. (medium to high)	(1) Low	10.0
		(2) High	9.7
More than high school graduate. (high)	(E) Less than high school graduate. (low)	(1) Low	9.1
		(2) High	10.7
	(F) High school graduate or more. (medium to high)	(1) Low	11.4
		(2) High	11.9

Source: USCCR analysis of *OE Survey* data. See App. C1.

TABLE 5.—TEACHER QUALITY AND STUDENT PERFORMANCE IN MAJORITY-WHITE AND MAJORITY-NEGRO SCHOOLS.—*(Average achievement in grade levels of low social class 12th grade Negroes by school social class, teacher quality, and racial composition of schools; Metropolitan Northeast)*

Individual's parents' education (social class of students)	School average: Parents' education (social class level of school)	Teacher average: Index	Proportion white classmates	
			Less than half I	More than half II
Less than high school. (low)	(A) Less than high school graduate. (low)	(1) Low	7.3	8.5
		(2) High	7.7	8.6
	(B) High school graduate. (medium to high)	(1) Low	7.8	9.5
		(2) High	8.6	9.5

Source: USCCR analysis of *OE Survey* data. See App. C1.

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[79] It might be suggested that this is related to Negro students' greater sensitivity to student body characteristics, as opposed to teacher characteristics. See *OE Survey* 302.

[80] See *app. C–1*, table 7.16 at 119.

ance of Negro students is substantially higher in majority-white (column II) than majority-Negro (column I) schools.

A more refined comparison of the relative importance of teacher quality and racial composition is possible. Consider disadvantaged Negro students in schools with poorer teachers and a majority of equally disadvantaged white students (row A1, column II). They perform at a higher level than similarly disadvantaged Negro students in school with better teachers and a majority of equally disadvantaged Negroes (row A2, column I). The same comparison holds (row B) when the disadvantaged Negro students are in schools with more advantaged children.

The relative strength of racial composition also was found to be at least as great for more advantaged Negro students.[80a] Although teacher quality has a consistent relationship to student achievement in majority-Negro schools, it is equally consistently outweighed by the effect of being in majority-white schools.

Teachers affect more than their students' verbal achievement. Their attitudes, and the standards they set for students also are likely to be related to their students' attitudes and aspirations. Other studies have highlighted the effect of teacher expectations on student performance. In one study, teachers were told that certain students, who actually had been selected at random, had especially high ability. As a result, their own expectations for these students rose and the students' performance improved markedly.[81] It seems likely that a similar relationship exists for student attitudes. Indeed, some studies suggest that students tend to adjust to what they perceive their teachers' expectations to be and to aspire and perform accordingly.[82]

Similar relationships were found in the Commission's further analysis of data from the *Equality of Educational Opportunity* survey. When the relationship between teacher qualifications and attitudes was tested against student aspirations, results similar to those obtained in the analysis of student achievement were found.[83] The clearest relationships were found between teachers' education and students' college plans.[84] Negro students in majority-Negro schools who have more highly educated teachers more frequently have definite plans to attend college.

This association, however, is weakened in majority-white schools. Differences in teacher qualifications are not as closely related to the frequency with which Negro students in such schools report definite college plans. Yet Negro students in these schools are more likely to have definite college plans than similar situated students in majority-Negro schools, regardless of the quality of their teachers. Thus the advantages of having more highly qualified teachers seem to be outweighed by the advantage of attending majority-white schools.

[80a] *Ibid.*

[81] Rosenthal, *Experimenter Effects in Behavioral Research* 411 (1966). This effect was clear only in primary grades.

[82] Davidson and Lang, "Children's Perceptions of Their Teachers' Feelings Toward Them Related to Self-Perception, School Achievement, and Behavior," 29 *Journal of Experimental Education* 107 (1960); See also: *Boston Hearing* at 98 (Testimony of Mrs. Joyce Johnson).

[83] See *app. C–1*, table 7.23–7.30 at 126–33.

[84] *Id.* tables 7.23 and 7.24 at 126–127.

It must be noted again that this analysis deals only with existing variations in teacher quality. It cannot assess the potential effects upon Negro students of improved teacher quality and teaching techniques.

It seems clear, however, that the performance of Negro students is distinctly less related to differences in the quality of schools and teachers than the social class and racial composition of their schools. This further reinforces the conclusion that the quality of education presently provided in schools does little to reverse the inequalities imposed upon children by factors within and outside the schools. The analysis thus suggests that changes in the social class or racial composition of schools would have a greater effect upon student achievement and attitudes than changes in school quality.[84a]

Racial Composition and Student Performance

In the preceding sections it has been shown that there is a relationship between the social class composition of schools and student performance which is distinct from the relationship between school quality and student performance. A relationship has been shown, too, between student performance and the racial composition of schools which also apparently is distinct from considerations either of school social class or school quality.

Two questions remain. First, does the higher performance of Negro children in majority-white schools result from a process of selection—the fact that they initially were more able students?

Second, if this is not the case, what does account for the performance differences between Negro students in majority-white and majority-Negro schools?

Selection

Wilson examined the question of selection in his study of Richmond students. Since the students' early elementary achievement was known, it was possible to determine whether the Negro students in majority-white schools initially were more able. When Wilson examined this question he found that:

> The Negro students who attended integrated schools had higher mental maturity test scores in their primary grades, and came from homes better provided with educative materials.[85]

[84a] *OE Survey* 325.

[85] See *Wilson app. C–3* at 185.

A related question, then, was whether the racial composition of the majority-white schools had an effect on the academic performance of the Negro children, in addition to their initial greater ability. When the early elementary achievement of these students was held constant, Wilson found that "the racial composition of schools, while tending to favor Negro students in integrated schools, does not have a substantial effect."[86] There was, however, still a strong effect of the social class composition of their schools.[87]

Yet if the Richmond Negro students who were in majority-white schools were initially more able, this still leaves open the question of the effects of majority-white schools on the performance of a broader range of Negro students, many of whom probably were not initially more able. Because of the small size of the sample, Wilson could not examine this question fully.

The Commission did examine the question—in further analysis of the survey data—with a larger sample of students. To determine whether the racial composition of schools had an effect upon the performance of a range of students, the achievement of *less able* Negro students in schools of different racial compositions was analyzed.

First, the performance of Negro students in different ability groups was studied. It is unlikely that Negro students in low ability groups uniformly would have been more able students earlier in school.[88]

The results of this analysis are summarized in Table 6.[89] It shows the verbal achievement levels of disadvantaged ninth grade Negro students, in low ability groups, in majority-white schools, in classrooms of different racial compositions. When row 1 is read across it is seen that there is relationship between verbal achievement and having a majority of white classmates. When row 2 is read, a similar but more pronounced relationship exists. When the columns are read down a marked relationship to social class composition is seen.

TABLE 6.—ACHIEVEMENT OF NEGRO STUDENTS IN LOW AND MEDIUM ABILITY GROUPS. (*Average verbal achievement in grade levels of 9th grade Negro students, in majority-white schools in low and medium ability groups; Metropolitan Northeast*)

Individual's parents' education (social class of students)	School average parents' education (social class level of school)	Percent white in classroom	
		Less than half	More than half
Less than high school graduate. (low)	(1) Less than high school (low)	5.8	6.2
	(2) High school or more (medium to high)	6.3	7.0

Source: USCCR analysis of *OE Survey* data. See App. C1.

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[86] *Id.* at 186.
[87] *Ibid.*
[88] For a full discussion, see *App. C–1*, sec. 1.2 at 37.
[89] *App. C–1*, table 5.6 at 91.

The achievement of a broad range of Negro students also can be examined by holding the average verbal achievement of their schools constant, while the relationship between student achievement and racial composition is assessed. The social class of individual students also is taken into account. Table 7 depicts the results for disadvantaged Negro students.[90] When row 1 is read across, it is seen that the achievement of disadvantaged Negro students in the lowest achieving schools increases in majority-white classrooms. The trend grows stronger as the average achievement level of the school rises.

TABLE 7.—NEGRO STUDENTS' ACHIEVEMENT CONTROLLING FOR SCHOOL AVERAGE ACHIEVEMENT. (*Average verbal achievement in grade levels for 9th grade Negro students by parents' education, average of school's verbal achievement scores, and proportion white classmates; for Metropolitan Northeast*)

Individual's parents' education (social class of students)	School environment: school average verbal achievement	Proportion white classmates		
		None	Less than half	About half or more
Less than high school (low)	(1) 8.0– 9.3	5.5	6.1	5.9
	(2) 9.4–10.8	6.3	6.6	6.7
	(3) 11.0	6.3	6.1	7.4

Source: USCCR analysis of *OE Survey* data. See App. C1.

Another approach to the problem was taken in a study prepared for the Commission by David J. Armor, Assistant Professor of Sociology at Harvard University. Armor further analyzed the Office of Education survey data to examine more closely the relationship between college aspirations and the racial composition of schools. His study sought to determine whether the higher college aspirations of Negro students in majority-white schools could be accounted for solely by their higher academic achievement. If they uniformly were more able then it might be argued that it was not the racial composition of the school, but their achievement which influenced the aspiration differences.

Armor thus dealt separately with the most academically able Negro male students, and weighed the relationship between racial composition of their classrooms and their college plans. The study focused on students whose verbal achievement was above the median for the region and who had "A" and "B" grades in school.

Armor found no consistent relationship between student aspirations and the racial composition of schools for advantaged Negro students. When he considered disadvantaged students of high ability, however, Armor concluded:

> . . . [I]t is the qualified, bright student from a lower class background . . . who is most aided by integration (or, conversely, hurt most by segregation). In a sense, he is the one for whom the most help is required. . . . For the able middle class Negro in a better

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[90] *Id.* table 4.13 at 82. The school average achievement includes all students.

> school, there is not as much effect due to integration. But do these students need the help? . . . 85 percent are already planning college . . . how much improvement do they need?
>
> Clearly, the effects of integration have been shown to help those with the greatest need for a boost. . . .[91]

The analysis suggests that selectivity does not entirely account for the relationship between the racial composition of schools and the achievement and aspirations of Negro students.

The Racially Isolated School

What is it, then, about the racially isolated school which seems to result in the poorer achievement of many Negro students? And conversely, what factors in the majority-white school account for the more positive attitudes and higher achievement of Negro students?

Negro students often come to school with attitudes and experiences which bear upon their performance in school. Like all children they become aware of racial differences at an early age. Young Negro children, however, often tend to reject their own skin color, and to have problems of self-esteem.[92] Kenneth Morland, Chairman of the Department of Sociology and Anthropology at Randolph-Macon College, has written:

> In a sense, American society educates for prejudice. Studies in both Northern and Southern communities . . . show that Negro as well as white children develop a bias for the white race at an early age. This bias is indicated by both a preference for and an identification with whites rather than with Negroes.[93]

There is reason to believe that the racial composition of schools can serve either to overcome or to compound these problems of low self-esteem.[94] For example, Calvin Brooks, during his testimony at the Cleveland hearing, described the environment at his school and its effects upon the students:

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[91] See *Armor app. C–2* at 146.

[92] For summaries and interpretation of studies and literature on low self-esteem among Negroes see: Vontress, "The Negro Personality Reconsidered," 35 *Journal of Negro Education* 210 (1966); Ausubel and Ausubel, "Ego Development Among Segregated Negro Children" in *Education in Depressed Areas* 109 (Passow ed. 1963); Karon, *The Negro Personality* (1958); 20 *Journal of Social Issues* [*The Negro American Personality,* spec. issue] (Pettigrew and Thompson ed. April, 1964).

[93] Morland, "The Development of Racial Bias in Young Children," 2 *Theory Into Practice* 120 (1963). In another study, Morland found that Negro nursery school children attending segregated schools in Lynchburg, Virginia, tended to identify themselves as white rather than Negro. "Racial Self-Identification: A Study of Nursery School Children," 24 *The American Catholic Sociological Review* 231 (Fall, 1963). In a later study, Morland compared two groups of children, one from Lynchburg, Virginia, and the other from Boston, Massachusetts. He found that both groups of Negroes manifested a bias for whites. Morland, "A Comparison of Race Awareness in Northern and Southern Children," 36 *American Journal of Orthopsychiatry* 22 (January, 1966). This bias toward whites does not appear to be a regional phenomenon.

[94] Clark, "Educational Stimulation of Racially Disadvantaged Children" in *Education in Depressed Areas* (Passow ed. 1963).

> . . . it had an effect because they were there and all they saw were Negroes and they were raised in an environment of poverty and the building was old and it had an effect I don't know of—of hopelessness. They didn't think that they could do anything because their fathers had common labor jobs and they didn't think they could ever get any higher and they didn't work, some of them.[95]

In part, the relationship between racially isolated schools and poor performance and low self-esteem is based upon the fact that predominantly Negro schools are generally regarded as inferior by the community. James Allen, Commissioner of Education for the State of New York, pointed out at the Commission hearing in Rochester that:

> . . . the all-Negro schools . . . are looked upon by the community as being poor schools. . . . No matter what you do to try to make them better, in the minds of most white people in these communities, they are poor schools.[96]

At other Commission hearings parents and teachers often testified that predominantly Negro schools are stigmatized institutions. Dr. Charles Pinderhughes, a psychiatrist who testified at the Boston hearing, said that "the Negro school carries with it a stigma that influences the attitudes both on the part of outsiders and on the part of parents, students, and teachers . . .".[97] Dr. John Fischer, President of Teachers College at Columbia University, has written of the

> . . . unfortunate psychological effect upon a child of membership in a school where every pupil knows that, regardless of his personal attainments, the group with which he is identified is viewed as less able, less successful, and less acceptable than the majority of the community.[98]

The impact of negative community attitudes upon children was illustrated at the Commission hearing in Cleveland where a teacher at an all-Negro high school was asked about a student exchange between his school and an all-white suburban high school. He explained how his students felt about themselves and the school after the exchange:

> . . . I think the reaction is somewhat illuminating as one of my students in one of my classes said last year, "Well, it was nice of them to come down to the zoo to see us." [99]

Community attitudes toward schools which identify them as inferior also are recognized by their teaching and administrative staff. Testimony at Commission hearings tended to confirm the conclusions of some researchers that teachers in racially isolated schools recognize the stigma of inferiority which is attached to their schools. At the Cleveland hearing, one teacher, asked how he felt when he was informed that he had been assigned to a school that was 95 percent Negro, replied:

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[95] *Cleveland Hearing* at 283.

[96] *Rochester Hearing* at 420.

[97] *Boston Hearing* at 139.

[98] John H. Fischer, "Race and Reconcilation: The Role of the School," 95 *Daedalus* 26 (Winter, 1966).

[99] *Cleveland Hearing* at 308 (Testimony of Charles Bohi).

> Well, I think I was a little bit disappointed personally. I knew . . . that any time a school is predominantly Negro . . . that there is a stigma that goes with it, that it just can't be first class. I not only feel that this is true in the minds of Negroes, but also in the minds of most whites.[100]

There is evidence that this affects the attitudes and performance of many teachers in majority-Negro schools. At the Commission hearing in Rochester, Franklyn Barry, Superintendent of Schools in Syracuse, N.Y., testified that in such schools teachers often "average down" their expectations of the students.[101] A study of schools in Harlem discussed the low teacher expectations there, and concluded that:

> The atmosphere stemming from such expectations cannot be conducive to good teaching, and is manifest in friction between teachers, abdication of teaching responsibilities . . . [and] a concern with discipline rather than learning . . .[102]

This is consistent with data from the *Equality of Educational Opportunity* survey which noted that Negro students were more likely to have teachers who did not want to remain in their present school. Their teachers also were more likely to feel that other teachers regarded their school as a poor one.[103]

Conversely the student environment in desegregated schools can offer substantial support for high achievement and aspirations.[104] The majority of the children in such schools do not have problems of self-confidence due to race and the schools are not stigmatized as inferior. The students are likely to assume that they will succeed in school and in their future careers, for the school reflects the mainstream of American society. The environment in such schools is well endowed with models of academic and occupational success. For Negro children, desegregated schools may pose problems of racial identification.[105] But they also offer association with other students who see a clear connection between their education and later careers with no contradictions or serious doubts. High aspirations held by Negro students in such schools are more likely to be supported by the similar aspirations of their schoolmates.[105a]

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[100] *Cleveland Hearing* at 302 (Testimony of Ulysses Van Spiva).

[101] *Rochester Hearing* at 468.

[102] Harlem Youth Opportunities Unlimited, Inc., *op. cit. supra* note 42 at 239.

[103] *OE Survey* 154, table 2.34.6.

[104] This discussion includes influence of desegrated schools in which there is a relative absence of tension. For further discussion, see *app.* C–1 at 42–43.

[105] For a general discussion of problems of identity, see, e.g., Erikson, "A Memorandum on Identity and Negro Youth," 20 *Journal of Social Issues* 29 (October, 1964); Lesser et. al., "Some Effects of Segregation and Desegregation in the Schools," *Integrated Education* 20 (June–July, 1964).

[105a] It may also be that there is a greater challenge to Negro students in desegregated schools.

School personnel in predominantly white schools more often feel that their students have the potential and the desire for high attainment. The *Equality of Educational Opportunity* survey found that white students are more likely to have teachers with high morale, who want to remain in their present school, and who regard their students as capable.[106]

The environment of schools with a substantial majority of Negro students, then, offers serious obstacles to learning. The schools are stigmatized as inferior in the community. The students often doubt their own worth, and their teachers frequently corroborate these doubts. The academic performance of their classmates is usually characterized by continuing difficulty. The children often have doubts about their chances of succeeding in a predominantly white society and they typically are in school with other students who have similar doubts. They are in schools which, by virtue both of their racial and social class composition, are isolated from models of success in school.

Cumulative Effects

The time spent in a setting of racial isolation or desegregation has an impact on student attitudes and achievement. The longer Negro students are in racially isolated schools, the greater the negative impact is likely to be. The cumulative effects of isolation also extend to income and occupation.

School Effects

A number of witnesses at Commission hearings testified to this effect. Amanda Houston, a Boston high school student, related the difficulties she encountered when she first entered a predominantly white high school from a racially isolated elementary school where her grades always had been very high. Asked if she had difficulty adjusting to the high school, she replied:

> Yes. Very much. Psychologically and academically. I had a very hard time keeping up with the other girls. . . . I just wasn't prepared to keep up with the standard of Girls Latin School. I wasn't prepared at the time I entered the school. . . . [and] I had never been really involved with white children before.[107]

Asked about Negro students in her high school who had attended desegregated schools earlier, Miss Houston said:

> They have done much better. There were two girls and both of them were recommended for their "National Merit" and . . . they seem to have adjusted very well . . . .[108]

The cumulative effect of desegregation was reflected in data from the *Equality of Educational Opportunity* survey. Figure 6 depicts the academic performance of Negro students in majority-white schools in relation to the time spent in racially isolated and desegregated schools.[109] It shows a consistent trend toward higher academic performance for Negro students the longer they are in school with whites. By contrast, there is a growing deficit for Negroes who remain in racially isolated schools. The trend in most cases is maintained whatever the students' family back-

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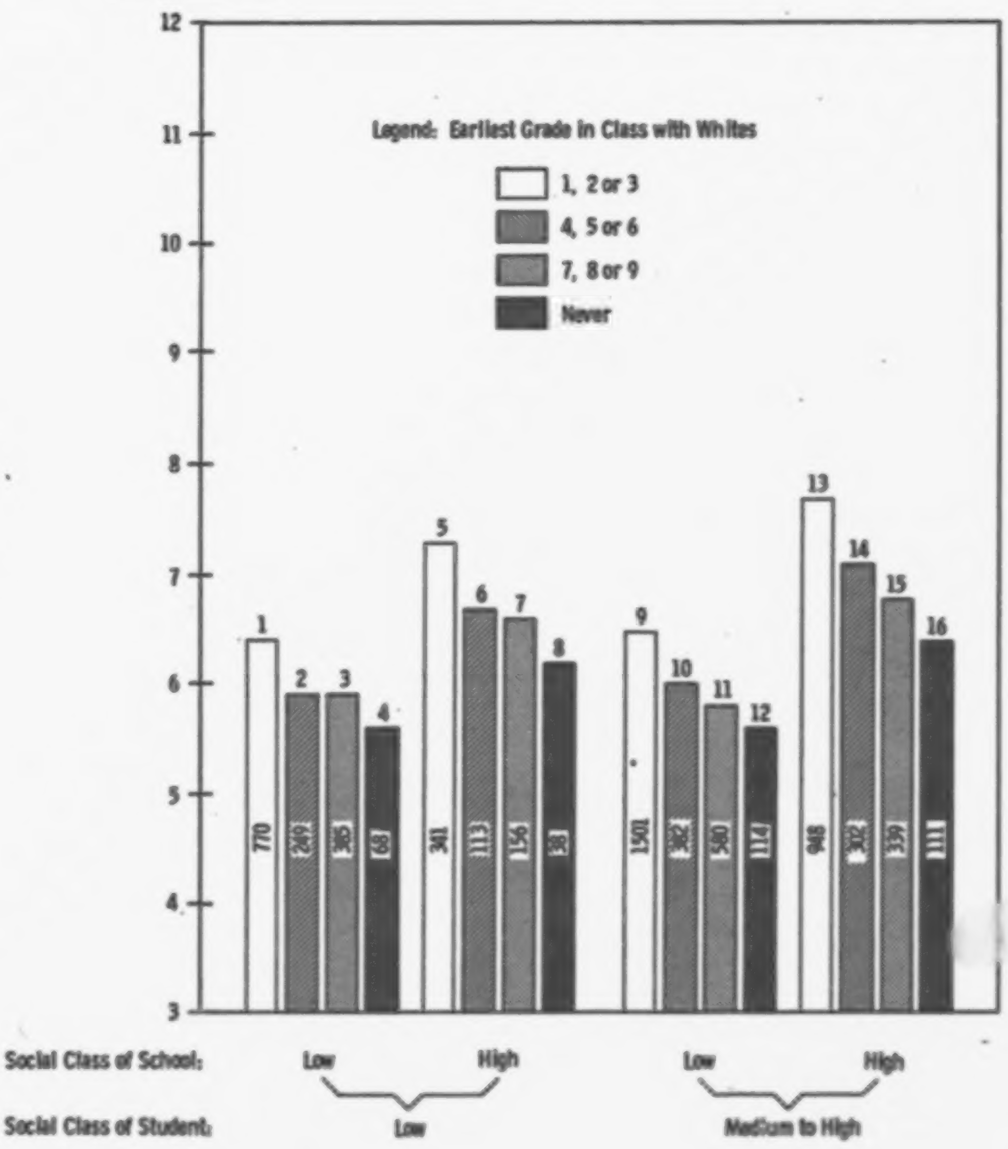
[106] *OE Survey* 156, table 2.34.8.

[107] *Boston Hearing* 202–203.

[108] *Id.* at 207.

Figure 6. Average Grade Level Performance for Ninth Grade Negro Students, by Social Class Origin of Student, Social Class Level of School and Earliest Grade in Class with Whites; Metropolitan Northeast



Note: The number in the bars represent the number of cases.
Source: USCCR analysis of *OE Survey* data. See App. C 1.

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[109] See *app. C–1*, table 2.1 at 48.

ground or the social class level of their classmates. Disadvantaged Negro children generally perform at higher levels if they have been in school with whites for some time, regardless of the present social class level of their classmates. They perform at even higher levels if, instead of simply being in schools with whites whose family background is the same as theirs, they are in schools where the students are from families of higher educational background.

The cumulative effect on attitudes is similar. Negro students who have had contact with whites since the early elementary grades are more likely to feel able to affect their own destiny than those who have not had that experience.[110]

Both the academic performance and attitudes of Negro students, then, are affected by the duration of their school contact with whites. Students whose first contact with whites was late in elementary or early in secondary schools are at a distinct disadvantage when compared with Negroes who have had school contact with whites since the early grades.

Income and Occupation

The cumulative effects of education extend in later life to differences in income and occupation. Negroes with levels of education similar to whites do not earn similar amounts of money or hold similar jobs. These differences have been attributed both to employment discrimination and the quality of education.[111] The racial composition of schools, however, has not been taken into account in these comparisons. When they are, important differences appear.

A national survey of Negro and white adults conducted for the Commission shows that for both Negroes and whites, levels of personal income rise with levels of education.[112] As Table 8 shows, Negro adults who at-

TABLE 8.—*Income levels: Percent of Negroes earning over $3,500 per year (median income of the sample)*

Education	Desegregated school	Isolated school
Some high school	42. 3	36. 6
High school graduate	62. 8	52. 8
College	75. 5	77. 3

Source: NORC Survey.

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[110] *Id.*, table 3.5 at 62.

[111] See, e.g., Council of Economic Advisors, "Annual Report" in *Economic Report of the President* 107 (1966); U.S. Dept. of Labor, *Report on Manpower Requirements, Resources, Utilization and Training* 36 (1965); Harrington, *The Other America* 61–81 (1963).

[112] For a description of this survey see *app. C–5* at 211. The survey was conducted by the National Opinion Research Center, at the University of Chicago, and the data analysis performed at Harvard University under the supervision of Dr. Thomas F. Pettigrew. The survey sample included some 1,600 Negroes and some 1,300 whites. (Hereinafter referred to as *NORC Survey*.)

tended desegregated schools are more likely to be earning more than $6,500 a year than otherwise similarly situated Negroes who attended racially isolated schools.[113] Only when Negroes with college education are considered does racial isolation appear not to affect one's chances of earning more than $6,500 a year.

Similar differences appear in occupations. As Table 9 shows, the proportion of Negroes in white-collar jobs increases as their level of education rises, but Negroes who attended desegregated schools are more likely to be in white collar occupations than Negroes who attended racially isolated schools.[114] Again, this does not hold for Negroes who have a college education.

TABLE 9.—*Percent of Negroes where main family earner holds a white-collar job*

Education	Type of school attended	
	Desegregated	Isolated
Some high school	18.5	11.8
High school graduate	28.6	19.6
College	53.5	59.5

Source: NORC Survey.

These differences in income are not accounted for by economic or social disparities in family background.[115] The source of the difference probably arises from both the academic advantages Negroes derive from desegregated schools, the increased associations they have with whites, and an ability to function better in desegregated situations.

* * *

Racially isolated schools, then, generally are regarded by the community as inferior institutions. The stigma attached to such schools affects the attitudes of both students and teachers. Students sense the community attitudes and the fact that their teachers often expect little of them. The combination of poor performance and low expectations reinforces their sense of futility and their image in teachers' minds as children who cannot learn. The negative attitudes and poor performance of Negro children in isolated schools accumulate over time, making a successful interruption of the process increasingly difficult. They carry over into adult life and are reflected there in levels of income and occupation.

The Perpetuation of Racial Isolation

The damaging consequences of racially isolated schools extend beyond the academic performance and attitudes of Negro schoolchildren and the subsequent impairment of their ability to compete economically and occupationally with whites. Racial isolation in the schools also fosters attitudes and behavior that perpetuate isolation in other important areas of American life. Negro adults who attended racially isolated schools are more likely to have developed attitudes that alienate them from whites. White adults with similarly isolated backgrounds tend to resist desegregation in many areas—housing, jobs, and schools.

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[113] *Id.*, table 2 at 215.

[114] *Id.*, table 1 at 215.

[115] *Ibid.* When the economic and social characteristics of the respondents' parents were controlled the relationship still existed.

At the same time, attendance at racially isolated schools tends to reinforce the very attitudes that assign inferior status to Negroes. White adults who attended schools in racial isolation are more apt than other whites to regard Negro institutions as inferior and to resist measures designed to overcome discrimination against Negroes. Negro adults who attended such schools are likely to have lower self-esteem and to accept the assignment of inferior status.

Conversely, Negroes who have attended desegregated schools tend to have a higher self-esteem, higher aspirations and are more likely to seek desegregated situations. Whites who have had desegregated education are more likely to report a willingness to accept Negroes in desegregated situations and to support measures that will afford equal opportunity.

Racial Attitudes

The racial attitudes and preferences of both Negroes and whites are influenced by the racial composition of the schools they attend. The process begins early.

For example, a 1962 study was made of student preferences in Louisville, Ky., where students are allowed to choose the high school they will attend. The city had six high schools, all but one of which was predominantly white. That school, Central High, had been segregated by law before 1954, and but for one white student, was still all-Negro in 1962.[116]

The study found that most of the Negro students who chose the majority white high schools previously had attended desegregated elementary or junior high schools, while most of the Negroes who chose Central High had not. It concluded: "The inference is strong that Negro high school students prefer biracial education only if they have experienced it before. If a Negro student has not received his formative education in biracial schools, the chances are he will not choose to enter one in his more mature years." [117]

Data from the Office of Education's survey bear out the inference that Negro students are much more likely to prefer racially isolated schools if they have attended only isolated schools and are more likely to prefer desegregated schools if they have attended such schools.[118]

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[116] U.S. Commission on Civil Rights, *Civil Rights, U.S.A. Public Schools Southern States, 1962* at 30.

[117] *Id.* at 30–31.

[118] See *app. C–1,* tables 6.7 and 6.8 at 98–99.

The same relationship holds for white students. Those who have not attended class with Negroes are likely to express a preference for segregated classrooms, while those who have been in desegregated classrooms are more likely to prefer desegregated classrooms. Moreover, white students whose interracial education began in the early grades are even more likely to prefer desegregated schools than whites whose first association with Negroes in school was in the upper elementary or secondary grades.[119]

The survey data also suggest that school desegregation has its greatest impact upon student attitudes and preferences through the mediating influence of friendship with students of the other race. Negro and white students who attend school with each other, but have no friends of the other race, are less likely to prefer desegregated situations than students in desegregated schools who have such friends. Having attended schools with students of the other race and having friends of the other race contribute to preferences for desegregation. The effect is strongest for students who have had both experiences.[120]

By the time students graduate from high school, they generally have formed racial attitudes and preferences that carry over into later life. A study of recent high school graduates in Oakland, Calif., revealed that 89 percent of the Negroes who attended desegregated schools, but only 72 percent of those who attended segregated schools, have white friends.[121] Negroes who attended desegregated schools in Oakland are more at ease with whites than those who attended segregated schools.[122] They are far more likely to disagree with the statement: "If a Negro is wise he will think twice before he trusts the white man as much as he would another Negro." [123] This is true whether they come from middle-class or working-class homes.[124]

Sharp dissimilarities emerge when the attitudes of these recent graduates toward school desegregation are compared. Almost all are in favor of school desegregation, but the Negroes who attended desegregated schools appear more interested in having their children attend desegregated schools. Seventy-six percent of the Negroes with desegregated education, but only 52 percent of the Negroes with segregated education responded affirmatively to the question: "Would you be willing to send your child out of the neighborhood to go to an integrated school?" The dissimilarity extends to neighborhood preferences as well. Seventy percent of the high school graduates who attended desegregated schools indicate that they would go out of their way to obtain housing in a desegregated neighborhood, compared to only 50 percent of those who attended racially isolated schools.[125] Thus, the racial attitudes, preferences, and future plans of recent high school graduates are strongly influenced by the racial composition of the schools they attended.

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[119] See *app. C–1*, tables 8.8—8.11, 138–41 and sec. 1.6 at 46; *OE Survey* 333, table 3.3.5.

[120] See *app. C–1*, tables 6.7, 6.8, and 8.10 at 98, 99, 141.

[121] See *Oakland app. C–4*, table 3 at 209.

[122] *Id.* table 5–7 at 209–10.

[123] *Id.* table 4 at 209.

[124] *Ibid.*

Negro adults show a pattern of attitudes and preferences similar to that found for recent high school graduates. In a national survey of Negro adults it was found that those Negroes who had attended majority-white schools were more likely than those who attended racially isolated schools to reject the statement about not trusting ". . . a white as much as . . . another Negro." This was true no matter what their age, sex, or educational levels, or whether they were born in the South or the North. As in the survey of recent graduates, the Negro adults who attended desegregated schools also expressed greater willingness to live in an interracial neighborhood, even if they would have to pioneer to do so.[126] Negro adults who had attended racially isolated schools were less likely to express a desire for their children to be in desegregated schools and they more often expressed the view that Negro children would have a difficult time in desegregated schools.[127]

Further, respondents in the adult Negro survey who are products of predominantly Negro schools revealed a lower sense of self-esteem. This trend persisted even when other types of interracial association—such as white friends and interracial neighborhoods—were accounted for. And it also held for both sexes and for different social class and age groups. Differences were most pronounced for those who never had been to college.[128]

The attitudes of whites—sampled in another national survey of adults—also were related to the racial composition of the schools they attended. Whites who attended desegregated schools expressed greater willingness to reside in an interracial neighborhood, to have their children attend desegregated schools, and to have Negro friends.[129] They consistently were more favorable toward the elimination of discrimination in employment against Negroes.[130] They more often favored fair employment laws and agreed that "Negroes should have as good a chance as white people to get any kind of job." [131]

Racial Association

These attitudes are associated with behavior. When actual patterns of residence, schooling, and association are examined for Negro and white adults, sharp differences again emerge between those who attended segregated and desegregated schools. Negroes who once attended desegregated schools are more likely to have children in desegregated schools today than those who had not.[132] As Table 10 shows, the chances of having children in desegregated schools increased as education levels rose. Negroes of higher educational status—and thus higher income—in general were less likely to have children in majority-Negro schools. But, irrespective of levels of education and income, Negroes are more likely to have children in majority-white schools if they attended such schools themselves.[133]

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[125] *Id.* tables 1 and 2 at 208.
[126] *App. C–5,* table 5 at 227.
[127] *Id.* table 7 at 229.
[128] *Id.* tables 11–15 at 223–37.
[129] *Id.* tables 5–15 at 227–37.
[130] *Id.* tables 13–15 at 235–37.
[131] *Id.* tables 12–15 at 234–37.

TABLE 10.—*Percent of Negro parents with children in majority-white schools*

Education	Type of schools attended	
	Majority-white	Majority-Negro
Less than high school graduate	44.8	35.4
High school graduate	43.1	37.5
College	63.4	56.2

Source: NORC Survey.

Negroes who attended desegregated schools also were more likely than those who attended racially isolated schools to reside presently in interracial neighborhoods. As Table 11 shows, the racial composition of schools attended has a consistent relationship to later residential isolation independent of educational and economic limitations. This is true at every level of education.[134]

TABLE 11.—*Percent of Negro adults living in mostly white neighborhoods*

Education	Type of schools attended	
	Majority-white	Majority-Negro
Less than high school graduate	27.3	20.7
High school graduate	35.5	17.0
College	36.3	28.9

Source: NORC Survey.

These comparisons suggest that the effects of racial isolation and desegregation carry over from early life into later life. The more time spent in racially mixed schools, the greater is the probability of living in integrated neighborhoods, of having children who attend desegregated schools, and of having close white friends.

Summary

The outcomes of education for Negro students are influenced by a number of factors including students' home backgrounds, the quality of education provided in their schools, and the social class background of their classmates. In addition to these factors, the racial composition of schools appears to be a distinct element. Racial isolation in the schools tends to lower students' achievement, restrict their aspirations, and impair their sense of being able to affect their own destiny.

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[132] *Id.* tables 6 and 6a at 216.

[133] *Ibid.*

[134] *Id.* table 3 at 215.

By contrast, Negro children in predominantly white schools more often score higher on achievement tests, develop higher aspirations, and have a firmer sense of control over their own destinies.

Differences in performance, attitudes, and aspirations occur most often when Negroes are in majority-white schools. Negro children in schools that are majority-Negro often fail to do better than Negro children in all-Negro schools. In addition, the results stemming from desegregated schooling tend to be most positive for those Negro children who began their attendance at desegregated schools in the earlier elementary grades.

An important contributing element to the damage arising from racially isolated schools is the fact that they often are regarded by the community as inferior institutions and students and teachers sense that their schools are stigmatized. This has an effect on their attitudes which influences student achievement.

Racial isolation also appears to have a negative effect upon the job opportunities of Negroes. Negro adults who experienced desegregated schooling tend to have higher incomes and more often hold white-collar jobs than Negro adults who attended isolated schools. These differences are traceable to the higher achievement levels of the Negroes from desegregated schools, and, in part, to the fact that association with whites often aids Negroes in competing more effectively in the job market.

Attendance in racially isolated schools tends to generate attitudes on the part of Negroes and whites that lead them to prefer association with members of their own race. The attitudes appear early in the schools, carry over into later life, and are reflected in behavior. Both Negroes and whites are less likely to have associations with members of the other race if they attended racially isolated schools. Racial isolation not only inflicts educational damage upon Negro students when they are in school, it reinforces the very attitudes and behavior that maintain and intensify racial isolation as well.

Moreover, the absence of interracial contact perpetuates the sense that many whites have that Negroes and Negro schools are inferior.

Racial isolation in schools has apparent effects on both Negro children and adults. This effect can be direct and obvious—as in impaired achievement and aspirations. It can be indirect and subtle—as in the negative interracial attitudes and behavior which further perpetuate the racial isolation. In either case, it contributes to the continuing process of damage and isolation.

Chapter 4

Remedy

There has been no general agreement among educators and concerned citizens on the best way to remedy the academic disadvantage of Negro children. The search for a remedy has been made more difficult by the controversy that often has accompanied efforts to achieve solutions. Communities have been divided by lawsuits, demonstrations, and boycotts. Parents, students, and private groups have contended over neighborhood schools, racial imbalance, and the selection of sites for school construction. On more than one occasion such local school disputes have erupted into violence, sending shock waves across the Nation.

Faced with a critical yet imperfectly understood problem, school systems generally have taken one of two basic approaches: the institution of compensatory education in majority-Negro schools or school desegregation. At present there is disagreement over the relative efficacy of these approaches.

This chapter explores compensatory education programs in majority-Negro schools. It then examines school desegregation techniques which have been applied in small and large cities. This discussion is followed by an analysis of factors which are important in successful school desegregation. Finally, the chapter discusses remedies which have been proposed but not yet implemented.

Compensatory Programs in Isolated Schools

The objectives of compensatory education programs have been summarized by Sloan Wayland, a sociologist:

> Start the child in school earlier; keep him in school more and more months of the year; . . . expect him to learn more and more during this period, in wider and wider areas of human experience, under the guidance of a teacher, who has had more and more training, and who is assisted by more and more specialists, who provide an ever-expanding range of services. . . .[1]

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[1] Wayland, "Old Problems, New Faces, and New Standards," in *Education in Depressed Areas,* 67 (Passow ed. 1963).

Compensatory education is a term which, as used by educators, may embody one or more of several distinct approaches to improving the quality of education for disadvantaged children. One approach—remedial instruction—is to give more intensive attention to students in academic difficulty. Remedial techniques usually include reduction of the number of students per teacher, provision of extra help to students during and after school, counseling, and use of special teaching materials designed to improve basic skills. Many of these techniques have been used in schools for years and currently are employed in suburban as well as inner-city schools.

Another approach—cultural enrichment—expands activities which schools traditionally have offered to students. Cultural enrichment programs attempt to broaden the horizons of poor children by giving them access to activities which ordinarily might be beyond their reach, such as field trips and visits to museums, concerts, other schools, and colleges. Such programs also commonly are found in middle class schools where they operate to supplement the normal cultural experiences of the pupils.

A third element of many compensatory education programs involves efforts to overcome attitudes which inhibit learning. Many educators have recognized that lack of self-esteem is a major cause of academic failure. A number of compensatory programs attempt to improve self-esteem (through the study of Negro history, for example) and to raise confidence by providing successful academic experiences and recognition. Some programs try to raise the expectations of both students and teachers to overcome negative and defeatist attitudes.

A fourth approach to compensatory education, incorporating many elements of the other approaches, is preschool education. This approach seeks to provide disadvantaged children with training in verbal skills and with cultural enrichment activities before they enter the primary grades. Although the importance of preschool education long has been recognized, such projects recently have become widespread with the support of funds from the Office of Economic Opportunity's Head Start program.

The goal of Head Start has been stated by the Office of Economic Opportunity:

> [S]pecial preschool education for children as young as 3 years old from disadvantaged home environments has rapidly become regarded by educational authorities as essential. If a 3- or 4-year-old child can be stimulated in a prekindergarten to learn the simple things he does not learn from his parents . . . he may get a head start on later success in school.[2]

One element common to many compensatory programs is an effort to involve parents in the school program. To improve the motivation of children for academic work, an attempt is made to assure parents that the schools are concerned about their problems and to give concrete suggestions about how parents may contribute to the academic success of their children. Some systems provide adult education in an effort to remedy inadequacies in the home environment.[3]

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[2] U.S. Office of Education and the Office of Economic Opportunity, *Education: An Answer to Poverty,* 20.

Compensatory education programs instituted in predominantly Negro schools attended mostly by disadvantaged students rest upon the assumption that the major cause of academic disadvantage is the poverty of the average Negro child and the environment in which he is raised. Children growing up in poverty, it is argued, begin school poorly motivated and with inadequate verbal skills. The disadvantage increases as children proceed through school, and this is attributed to the failure of the schools to provide adequate services. As a report of the Pittsburgh schools said:

> [N]ot all low achieving schools are in predominantly Negro neighborhoods. Low achievement is associated with economic, cultural, and social disadvantages rather than with race or creed.[4]

Racial and social class isolation is not necessarily regarded by advocates of compensatory education as an obstacle to success. In San Francisco, for example, Superintendent Spears wrote:

> Many Negro children bring to school a speech pattern which reflects an incorrect phonetic conception of words. . . . Consequently [ethnically homogeneous] schools and the teachers within them develop proficiency in working with the pupils. . . . The homogeneity of language difficulties of a group of children is capitalized upon in the curriculum planning of a school as a whole as well as the teacher as an individual.[5]

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[3] See for example: San Francisco Unified School District, *Compensatory Education Program, Evaluation Report,* 78 (September 1, 1966), which describes an adult education program in family care. See also: Board of Education, Englewood, New Jersey, *Englewood School Development Program, First Annual Report,* 17 (1964–65) which describes basic adult education courses with the expectation that "illiterate parents who become involved in learning themselves take a keener interest in the education of their children."

[4] Board of Public Education, Pittsburgh, Pa., *The Quest for Racial Equality . . . A Year Later* (May 1966 brochure). See also: *Cleveland Hearing* at 379. Superintendent Briggs of Cleveland states: "The fact is that we are finding a greater affinity to lack of progress as it relates to poverty than we are to race." See also: *Interviews With Urban Public School Superintendents,* prepared for the Race and Education Project of the U.S. Commission on Civil Rights by McPherson, (Oct. 1966), 39. Superintendent Carl Dolce, of New Orleans is quoted: "It is no secret that, because of economic factors and the lack of opportunity, Negro youth on the average are significantly behind white youth in terms of achievement. The question really breaks down by class; that is, we are dealing with what is essentially a class rather than a racial problem."

[5] Spears, *The Proper Recognition of a Pupil's Racial Background in the San Francisco Unified School District,* 14 (June 19, 1962). See also testimony of Paul Kennedy, director of Compensatory Education Services, Boston Public Schools, *Boston Hearing* at 170. In response to questions about whether or not compensatory education would be more effective if racial isolation were eliminated, Mr. Kennedy said: "I would like to see the saturation program continued in the neighborhood schools because, I think, educationally, fiscally, and administratively it is almost not feasible to spread it citywide."

In 1965, one survey found approximately 85 major compensatory education programs—those servicing more than 1,000 pupils—in operation throughout the United States.[6] The largest programs are in urban areas where there are high Negro enrollments. As Table 1 shows, compensatory education in the cities generally means special education for Negro children.[7]

TABLE 1.—*Distribution of compensatory education programs among elementary schools in 12 city school systems, by racial composition of schools—1965–66*

City	Total number of schools using compensatory education funds	Number of schools more than 50 percent Negro	Number of schools 11 to 50 percent Negro	Number of schools 0 to 10 percent Negro
Buffalo	30	17	7	6
Pittsburgh[1]	51	25	19	7
Philadelphia	65	59	5	1
Oakland	26	23	3	0
Cincinnati	30	21	5	4
Boston	45	31	5	9
Atlanta	40	31	0	9
San Francisco	47	20	9	18
New Haven	14	11	3	0
Milwaukee[1]	46	19	9	18
Baltimore[1]	105	77	11	17
Detroit[1]	130	101	18	11

[1] Figures for 1966–67.

Allotments to city schools under Title I of the 1965 Elementary and Secondary Education Act, the largest single source of funds for compensatory education,[8] are mostly for compensatory programs in majority-Negro schools.[9] Of the remaining funds under this Act, a large share goes to assist economically disadvantaged white children who attend nearly all-white schools, as for example, in Milwaukee and San Francisco—cities which have concentrations of poverty in both white and Negro areas.

The following discussion analyzes some of the better known compensatory education programs that have been instituted in majority-

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[6] Urban Child Center, School of Education, University of Chicago, *Inventory of Compensatory Education Projects, 1965.* The inventory, which does not purport to be complete, lists several hundred programs. Of these, about 85 were listed as serving 1,000 or more children and/or 5 or more schools. Among these 85 projects, more than 40 large cities were represented.

[7] Data for the table obtained in a survey of schools systems conducted by the Commission. The data presented in the table were compiled on the basis of published reports, and unpublished data submitted by the school systems. See also: *Inventory of Compensatory Programs, op. cit. supra,* note 6. Of the larger projects, racial data were given for about one-half.

[8] During the first year of the operation of the Elementary and Secondary Education Act of 1965, approximately $1 billion was spent on more than 22,000 projects. (U.S. Office of Education, *Accent on Compensatory Education* [draft] at ii.)

[9] The chart below shows the distribution of Title I funds among schools in 13

Footnotes continued on following page.

Negro schools—programs which have served as prototypes for many others. In assessing these programs, the Commission first examined studies and evaluations conducted by local school systems. Although there are many published studies, few were found which contained detailed data about the results of the programs. Some of the more detailed evaluations are discussed below.

It should be stressed that the Commission has not sought to evaluate the effects of compensatory education, *per se,* or the intrinsic merits or effectiveness of any of its components. Rather, the following analysis

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systems. Data were supplied in the survey conducted by the Commission, described *supra,* at 7.

Schools with compensatory programs under Title I: Elementary schools in city school systems by racial composition of schools—1965–66

City	Total number schools using Title I funds	Number more than 50 percent Negro	Number 11–50 percent Negro	Number 0–10 percent Negro
Buffalo	30	17	7	6
Pittsburgh [1]	51	25	19	7
Philadelphia	65	59	5	1
Oakland	10	9	1	0
Cincinnati	29	20	5	4
Boston	45	31	5	9
Cleveland	78	50	7	21
Atlanta	40	31	0	9
New Haven	14	11	3	0
San Francisco	39	16	8	15
Baltimore [1]	54	48	5	1
St. Louis	62	53	5	4
Milwaukee [1]	46	19	9	18

[1] Figures for 1966–67.

The Title I guidelines, promulgated in 1965, apparently encouraged use of funds in attendance areas where poverty was concentrated. See U.S. Office of Education, *School Programs for Educationally Deprived Children,* 7 (1965): *"Are project benefits limited to children of low-income families?* No, although low income identifies the attendance area to be served. . . . *Is participation in a project limited to children residing in an attendance area designated for the project?* Usually it is. However, children residing outside the attendance area served by the project may participate in the project if there is room for them."

See also McPherson, *op. cit. supra,* note 4, at 47–8, 56, and 62. School officials from Dallas, Detroit, and Cleveland expressed concern over the Federal formula for Title I. Superintendent Briggs of Cleveland, for example, stated: "We are really hampered by the formula. John Adams High School does not have enough poverty level students to qualify it under the formula, but it has children with intensive needs. We will need a half million dollars in that school to keep it integrated." Despite the difficulty with the formula, systems such as Rome, N.Y., Mount Vernon, N.Y., Charleston, W. Va., Portland, Oreg., Berkeley, Calif., Los Angeles, Calif., and Cleveland, Ohio, did use Title I funds to promote desegregation. (See: U.S. Office of Education, *Statement re Impact of Title I, Elementary and Secondary Education Act of 1965 (Public Law 89–10) on De Facto Segregation,* at 2.) On Aug. 9, 1966, the U.S. Commissioner of Education sent a letter to State superintendents of education clarifying the intent of the regulations: "The development of special educational assistance for [disadvantaged children] at locations outside their immediate attendance areas is encouraged provided such assistance is specifically designed to meet their special educational needs and the location offers special advantages, such as opportunities for learning in a widely representative social environment."

weighs only the measurable results of compensatory programs upon the academic performance of Negro students in majority-Negro schools.

The Commission's review of compensatory education, moreover, does not purport to assess programs which only recently have begun, notably Project Head Start. It would be unwise to attempt an evaluation of such programs until sufficient time has elapsed to permit their effects to be tested fully.

The following discussion has two parts. First, the performance of Negro students in majority-Negro schools with compensatory programs is assessed and compared with that of similarly situated Negro students in majority-Negro schools without compensatory programs.[10] Second, Negro students in majority-Negro schools with compensatory programs are compared with similarly situated Negro students in majority-white schools without compensatory programs.

Effects of Compensatory Education in Majority-Negro Schools

Three compensatory programs operating entirely or principally in majority-Negro schools—the Banneker Project in St. Louis, Mo., the Higher Horizons Program for Underprivileged Children in New York City, and the All Day Neighborhood School Program in New York City—were reviewed by the Commission.

The Banneker Project in St. Louis is one of the largest compensatory projects in the Nation. Unlike programs in most other cities, for many years it did not involve the expenditure of any additional funds.[11]

The project began in the 1957–58 academic year, and during 1965–66 involved 23 majority-Negro elementary schools which enrolled more than 14,000 students.[12] The Banneker District is populated by families with a very low average family income. From its inception, the principal objective of the project has been to improve student achievement by raising the expectations of teachers, the motivation of students, and the aspirations of parents. Meetings of teachers, and working with parents and community groups have been emphasized.[13] These techniques have been supplemented by efforts to instill a sense of competition among the Banneker schools.[14]

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[10] Data for the Banneker program did not permit such a comparison. Data were not available about the socioeconomic status of other majority-Negroes.

[11] *Conference Before the United States Commission on Civil Rights, Williamsburg, Va.,* 218 (February 1961). Hereinafter cited as *Williamsburg Conference.* In a telephone interview with Dr. Samuel Shepard, director of the program, he stated that the Banneker schools began getting Federal funds in 1964–65. Staff interview, Dec. 28, 1966. Hereinafter cited as *Shepard Interview.*

[12] *Shepard Interview.* Enrollment data from *St. Louis Study,* A–5 (1966).

[13] Shepard, *Efforts in the Banneker District To Raise the Academic Achievement of Culturally Disadvantaged Children* (September 1965); *Williamsburg Conference,* at 215, 217.

Examination of the program's impact upon student performance can be carried out in two ways. Although each has limitations, both provide some indication of the program's effect. First, the average performance of Banneker schools can be compared to national norms for student performance. When the program started in 1957–58, the average eighth-grade reading scores in Banneker schools were about a year below the national norms. By the 1960–61 school year, after the program had been in existence for three years, Dr. Samuel Shepard, the program's director and superintendent of the Banneker School District, reported that eighth-grade reading levels at the Banneker schools had shown a noticeable improvement. They were, on the average, only one-half year below the national average.[15] A comparison of eighth-grade reading test scores in subsequent school years, however, shows that this gain apparently was not sustained. In 1965–66, eighth-grade students, some of whom had been in the program for seven years, were tested. The majority of Banneker schools then were a year or more below the national average.[16]

It also is possible to compare the academic standing of the Banneker schools with that of other nearly all-Negro and nearly all-white schools, between 1962–63 and 1965–66. During these three years the relative standing of most Banneker schools did not improve. In 1962–63 the reading level of the Banneker schools ranged in a fairly even distribution; slightly more than half the schools were up to a year behind grade level, and slightly less than half were at or above grade level. This was the same range as that of other nearly all-Negro schools. In that year, however, only a few nearly all-white schools were below grade level; most were at or above grade level.

By 1965–66, none of the Banneker schools was at or above grade level and most of them were about a year below grade. This again was comparable to other nearly all-Negro schools. The position of Banneker schools relative to nearly all-white schools, however, was slightly lower.[17]

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[14] *Williamsburg Conference,* at 214. Principals and teachers have been made aware of achievement test scores for each school.

[15] *Id.* at 217–18.

[16] In 1965–66, nine of the 15 Banneker schools with eighth grades had scores ranging between 7.1 and 7.5 (the test was given in January; national norm was 8.4–8.5). Of the 14 Banneker schools with eighth grades in 1962–63, 8 scored between 8.1 and 9.0, with the median falling at about 8.5 (the norm that year was 8.8–8.9). (*St. Louis Study,* A–5.)

[17] *Ibid.* The chart below shows the distribution of scores in 1962–63 and 1965–66. In 1962–63 tests were given in May (national norm 8.8–8.9, in 1965–66 in January (national normal 8.4–8.5). Data for years prior to 1962 were not available.

Footnote continued on following page.

These data suggest that the initial gain in the Banneker schools has not been sustained relative either to national norms or other schools in the system. The data, however, are not complete. For a full assessment of the program, data on individual students in various schools would be needed. In addition, school officials in St. Louis believe that later tests may show improved results.[18]

Dr. Shepard has expressed enthusiasm for the program, stating that it has contributed to the motivation of children, parents, and teachers. At the same time, he has suggested that the program would afford much greater benefits if it were conducted in desegregated schools:

> Although many Negro students are in racially isolated schools, their principals, teachers, and parents still have to do their very best to help them learn. But there is no question that this effort with Negro students in integrated schools would achieve far more. I have long held that my own 8-year-old son is being cheated because he attends a segregated school.[19]

The Higher Horizons Program in New York has been termed "the most extensive project ever undertaken in the area of education for dis-

Comparison of 8th-grade reading test scores among Banneker schools, other nearly all-Negro schools, and nearly all-white schools, 1962–63 and 1965–66

Reading level	Number and percent of schools 10 percent or less Negro	Number and percent of other schools 90 percent or more Negro	Number and percent of Banneker schools
1962–63:			
6.0–7.0	0	0	0
7.1–7.5	0	0	0
7.6–8.0	0	0	3 (21.4)
8.1–8.5	3 (9.1)	7 (35.0)	6 (42.8)
8.6–9.0	10 (30.3)	9 (45.0)	2 (14.3)
9.1–9.5	15 (45.5)	4 (20.0)	3 (21.4)
9.6–10.0	5 (15.2)	0	0
1965–66:			
6.0–7.0	0	0	2 (13.3)
7.1–7.5	1 (3.1)	9 (36.0)	9 (60.0)
7.6–8.0	5 (15.6)	12 (48.0)	4 (26.7)
8.1–8.5	14 (43.8)	4 (16.0)	0
8.6–9.0	10 (31.3)	0	0
9.1–9.5	2 (6.3)	0	0
9.6–10.0	0	0	0

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[18] Dr. Shepard gave further information about the tests. In 1964, the testing procedure was changed. Children were tested in January instead of May. Instead of being tested in their own schools, they were required to walk (often long distances) to a high school. Dr. Shepard felt that being tested in unfamiliar surroundings had a negative effect and accounts for the drop in scores. He stated that eighth grade IQ gains made between 1957 and 1962 had been sustained and that the IQ testing procedure had not been changed. Fourth grade IQ scores for 1962 and 1964, however, showed a drop similar to that in achievement test scores. *St. Louis Study,* A–5. Dr. Shepard expects the achievement test scores to improve this year because tests will again be administered in the elementary schools. The absence of control group data makes a final assessment of the program impossible. The presence of other compensatory programs in some of the schools in recent years presents another variable for which controls could not be established. *Shepard Interview.*

[19] Staff telephone interview Dr. Samuel Shepard, Nov. 16, 1966.

advantaged children."[20] The program has been supported by both city and Federal funds. During the 1962–63 school year, expenditures amounted to $3.8 million.[21] Much of the pioneering work in compensatory education was done in Higher Horizons and the program has served as a model for other school systems.[22] Higher Horizons sought to raise the academic performance of disadvantaged students, improve their motivation, and broaden their cultural horizons.[23]

The program was patterned after an experimental project, the Demonstration Guidance Project, which began in 1956 at a Harlem junior high school[24] in which a majority of the students were Negro and Puerto Rican.[25] The project served about 700 seventh, eighth, and ninth grade students who showed academic potential.[26] Of this selected group, 329 continued in the project at George Washington High School,[27] a majority-white academic high school.[28] Per pupil expenditures were increased by about $80 per year at the junior high school and by about $250 per year at the high school.[29] An evaluation of the program found that 147 of 250 students who had begun the project in seventh grade gained on the average 4.3 years in reading achievement after 2.6 years of the program at the junior high school.[30] The evaluation also found that a significantly larger proportion of the 329 students in the high school group continued their education beyond high school than was the case for unselected children who had graduated from the same junior high school during preproject years.[31]

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[20] Wrightstone, Forlano, Frankel, Lewis, Turner, and Bolger, *Evaluation of Higher Horizons Programs for Underprivileged Children,* 32 (1964). (Hereinafter cited as *Higher Horizons Evaluation.*)

[21] *Inventory of Compensatory Education Projects, op. cit. supra* note 6. Landers, *Higher Horizons Progress Report,* 15 (January 1963).

[22] See *Education in Depressed Areas,* 343 (Passow ed. 1963). "Perhaps the most widely known enrichment program is the higher horizons program of New York City, now being adapted in numerous other communities."

See also U.S. Office of Education, *A Chance for a Change,* 22 (1966). "Many school officials in the United States, in implementing Title I programs . . . are taking what they consider a sure course to success. They are expanding on the practices of the New York Higher Horizons Project, the Detroit Great Cities Program, and their own Head Start."

[23] Daniel Schreiber, coordinator, Higher Horizons Program has said: "We seek to raise the educational, cultural, and vocational sights of all children, especially children from the less privileged groups. . . . Our basic approach is to create in the mind of a child an image of his potential, fortify this image by parent, teacher, and community attitudes." *Williamsburg Conference,* at 224.

[24] Landers, *op. cit. supra* note 21, at 2–3.

[25] Wrightstone, *Assessment of the Demonstration Guidance Project,* at 15 (undated).

[26] *Id.* at 31. Seven hundred seventeen children, or 52.1 percent of the total school population, entered the project in the fall of 1956. Eventually 914 children were in experimental classes at one time or other.

[27] *Id.* at 87. Three hundred twenty-nine stayed in the high school. Of this group, 22 eventually dropped out of project classes, although they continued to receive project services.

[28] *Id.* at 19. The high school was 25 percent Negro; 10 percent Puerto Rican.

[29] *Id.* at 117–118.

[30] *Id.* at 31, 69. Assessment was made of the group that had been in seventh grade in the fall of 1956 and, therefore, that had two and one-half years of project services at the junior high school. In October 1956, the median for the group on the paragraph meaning portion of the Stanford Reading Test was 1.4 years below grade level. Eleven percent of the pupils were 1 year or more above grade level. By April 1959, the median for this group was 0.3 years above grade level. Thirty-five percent were 1 year or more above grade level.

In light of the success of the Demonstration Guidance Project, Higher Horizons was initiated in 1959.[32] It differed from the Demonstration Guidance Project in two important respects.

First, Higher Horizons sought to reach a larger group of children, not limited to those who showed academic promise. In 1959, some 12,000 children, mostly Negro and Puerto Rican, from 31 elementary and 13 junior high schools—most of which were predominantly Negro—were included. By 1962, the program included 64,000 children from 52 elementary schools, 13 junior high schools, and 2 senior high schools.[33]

Second, the annual per pupil expenditure for Higher Horizons amounted to $50 to $60 above the normal city allotment, compared to $80 to $250 above the city average in the Demonstration Guidance Project.[34] As the program was expanded, attention to the individual needs of children became less feasible. In 1959, one additional teacher or counselor was provided for every 108 children. By 1962, there was one additional teacher or counselor for every 143 children.[35]

Four major techniques were used in Higher Horizons. First, teachers were trained and encouraged to improve both their expectations of the students and their own ability to teach disadvantaged children. Second, counseling and guidance services were extended and increased in an effort to raise student aspirations and to provide greater opportunities for employment and further education. Third, an effort was made to broaden the cultural backgrounds and horizons of students through visits to museums, libraries, colleges, and concerts. Special remedial teachers were provided to upgrade reading, writing, and arithmetic skills.[36]

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[31] *Id.* at 89, 93–94. Of 1,392 children graduating from the junior high school between 1954 and 1956, 9.3 percent entered some sort of post high school institution. This compares to 51.0 percent of the project children who attended George Washington High School, and 22.2 percent of the entire junior high school population, including project students, during the project years. The evaluation states that during the project years a middle income housing project was introduced into the area and more opportunities for post high school experiences were created with the expansion of junior college programs in the area. However, the evaluators felt that, despite these factors, differences between the achievement of preproject and project groups were large enough to indicate that the program was successful. The evaluation lacks comparison of growth at the junior high school and high school. Comparable controls groups are absent. Therefore, it is impossible to draw definite conclusions about the degree of success of the program or the relative influence of selectivity, desegregation, and the program itself.

[32] Landers, *op. cit. supra* note 21, at 3.

[33] *Id.* at 5. The average elementary school was 16.8 percent Puerto Rican, 71.9 percent Negro, and 11.3 percent "other." Of the 13 junior high schools, 2 were predominantly "other," 9 were predominantly Negro, 1 was 70.3 percent Puerto Rican, and 26.4 percent Negro, and 1 was 46.8 percent Puerto Rican and 48.7 percent Negro. *Higher Horizons Evaluation* at 8, 20.

[34] Schreiber stated that the per pupil expenditure was $50 in 1959–60. *Williamsburg Conference,* at 228. Landers states the per pupil expenditure for 1962–63 was $61. Landers, *op. cit. supra* note 21, at 15.

[35] Landers, *op. cit. supra* note 21, at 5.

Five years after the Higher Horizons Program had been inaugurated, New York City school administrators evaluated the program's impact upon the performance and attitudes of students. Students in schools with Higher Horizons programs were compared with students who had suffered a similar lag in achievement but who continued to attend schools without compensatory education programs. Academic performance, classroom behavior, and the academic motivation and attitudes of students toward school were compared. Evaluations of the students and of the compensatory program by teachers and counselors also were examined.[37]

Prior to the evaluation, Jacob Landers, coordinator of the program, had commented that:

> It is no slight matter to raise the level of reading of an entire group of 64,000 children by even 1 month. Yet, in the final analysis, the success of Higher Horizons and similar programs must be judged largely by such criteria. . . . If within a reasonable period of time, the level of academic functioning has not been raised, then our effort must be judged largely a failure.[38]

Although the professional staff participating in the program expressed the view that the program was successful in the area of expanding cultural horizons and in the provision of additional guidance services, the investigators found no significant differences between students in schools with the Higher Horizons Program and similarly situated students in schools without the program. These two groups of students showed no difference in academic achievement. In three school years both groups had gained only about two years in reading achievement.[39]

Nor did the pupils in the Higher Horizons schools report different attitudes toward school than the pupils in schools without Higher Horizons. The professional staff reported that the program had little effect upon classroom behavior, study habits, and the educational goals of the students.[40] According to the findings of this evaluation, the Higher Horizons Program did not fulfill its objectives.

Some educators ascribed part of the difficulty to the fact that the program was funded and staffed inadequately. While most teachers involved in the program felt that the additional services had been helpful, the evaluation of the program stated that these services still had not been adequate and attributed the greater success of the Demonstration Guidance Project in part to this factor.[41]

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[36] *Id.* at 11–13.

[37] *Higher Horizons Evaluation* at 231–32.

[38] Landers, *op. cit. supra* note 21, at 9.

[39] Third-grade reading comprehension scores for the experimental group averaged 3.59 as compared to 3.54 for the control group; by sixth-grade, the reading scores for the experimental group averaged 5.51 as compared to 5.65 for the control. IQ scores at the sixth-grade level, after 3 years of Higher Horizons, were 93.47 for the experimental group and 93.95 for the control group. The third-grade scores for these children had been 94.07 for the experimental group and 94.21 for the control. Thus, both groups showed a slight decrease in IQ. *Higher Horizons Evaluation* at 55, 40.

[40] *Id.* at 234.

Dr. Elliott Shapiro, who had been principal of a Central Harlem elementary school which was included in the Higher Horizons Program, testified at the Commission's Rochester hearing that:

> [W]ith that limited budget . . . pretty soon . . . instead of an enriched program, [we got] changes of title so that people became Higher Horizons Reading Improvement Teachers. And as we got that Higher Horizons Reading Improvement Teacher . . . we also lost a classroom teacher at the same time. . . . As a result of this dilution, maybe there were some few changes in attitude that occurred that are hard to measure or evaluate, but there was really very little change in achievement.[42]

A somewhat different approach from that of Higher Horizons was taken in New York City's All Day Neighborhood School Program (ADNS). The ADNS Program focused only on elementary school children and included efforts to deal with the effects of their neighborhood environment. It was described as a

> [C]omprehensive program operating during the school day, after school and in the neighborhood. It not only takes the child off the slum street, it provides him with positive school experience that makes it possible for him to accept the middle-class teachers and school aims.[43]

ADNS involved 15 elementary schools located in economically impoverished neighborhoods in New York City. Seven of the schools were majority-Negro; four were predominantly Puerto Rican, and Negroes and Puerto Ricans together constituted a majority in four others.[44] Seven teachers with special training in child development and home and school relationships were assigned to each school. During the school day they assisted regular classroom teachers and after school they conducted a program which included activities related to the school work done that day.[45] The cost of the program was about $70,000 per school, or about $60 per pupil in excess of normal expenditures.[46]

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[41] *Id.* at i, 234, 242.

[42] *Rochester Hearing* at 292–293.

[43] Sexton, Barenblatt, Billig, Hofmann, Hopson, Parker and Wells, *An Assessment of the All-Day Neighborhood School Program for Culturally Deprived Children,* at 2 (1962–65).

[44] *Id.* at 3 (number and location of schools). For racial composition see Letter from Mary Thompson, acting director, ADNS, to United States Commission on Civil Rights, Nov. 17, 1966.

[45] Sexton, et al. *op cit. supra* note 43, at 3, and 6–7.

[46] Staff telephone interview with Mrs. Adele Franklin, former director of ADNS, November 1966. Total enrollment figures for the schools were obtained from the New York City school system.

In 1965, the program was evaluated by independent researchers from New York University. Children from the ADNS schools were compared to control-group children from schools without compensatory programs. It was found that the program had not measurably improved the reading levels, IQ scores, or academic achievement of the ADNS children.[47] These students also were compared in a followup evaluation of their performance in junior high school. Again, there were no significant differences between students who had been in the ADNS Program and students who had had no compensatory education.[48]

The Commission has reviewed evaluations of more than 20 other compensatory education programs in large cities. These evaluations, conducted by the local school systems, report mixed results. Because the data often were incomplete and the period in which the programs had been in operation often was too short, it is not possible to draw absolute conclusions about the relative success or failure of these programs. In most instances, however, the data did not show significant gains in achievement.[49]

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[47] Sexton, *op. cit. supra* note 43, at 115.

[48] *Id. at* 116–117.

[49] Few evaluations were found which gave sufficient racial and control group data. Findings of four of the more detailed evaluations are as follows: In Greenwich, Conn., a nearly all-white group of underachieving seventh-graders was given a special reading course. At the end of a year, 76 percent of the experimental and 23 percent of the control groups gained 1–3 years in reading achievement. Central Junior High School, Greenwich, Conn., *Individual Development Program* (July 1964). In Oakland, Calif., results of a third and fourth grade language program in 1962–63, for a predominantly Negro group of children, showed gains in reading achievement significant at the .05 level for three of four experimental groups as compared to controls. Thirty-five children from the three successful groups were studied a year after the program ended. They continued to be ahead of the control group. The difference was at the .01 level of significance. The program was given to another predominantly Negro group in 1963–64. At the end of the year, experimental children had gained about 1.5 years in reading achievement as compare to 1.0 year for controls. Oakland Public Schools, *Report of Evaluations of Third and Fourth Grade Language Development Program* (1964). Evaluations were made of two 1-year programs for Negro and Mexican-American primary children in Fresno, Calif. Children in second and third grade, achieving less than expected, gained 9 months in reading as compared to 6 months for controls. Experimental second-graders achieved 1.4 years as compared to 1.0 for controls. The second program, the extended day reading program in 1964–65, showed no significant gains for experimental over control children. Fresno City Unified School District, *Statistical Data from Pilot Project in Compensatory Education* (June 4, 1965). Another factor preventing adequate assessment of these programs is the Hawthorne effect. Educators caution that initial gains in compensatory programs are often lost in subsequent years after the novelty of the program has been lost. Reissman, *The Culturally Deprived Child* at 103–05 (1962). During the Boston hearing, Paul Kennedy, director of Compensatory Education Services, Boston Public Schools, testified that Boston's Operation Counterpoise, a compensatory program carried out in schools in poor areas, had produced improvement in reading achievement. The program was begun in the predominantly Negro Higginson District in 1963–64 and expanded to 11 other districts by 1965–66. Mr. Kennedy reported overall success in the 12 target districts for the 1965–66 school year: "The 1966 scores were higher than the 1965 scores. . . . The median score in grade 1 in April was 2.2 and in April

Footnote continued on following page.

Comparative Effects of Compensatory Programs and Desegregation

The Commission also reviewed four compensatory programs which allowed comparison of the performance of Negro students who received the benefits of the program in majority-Negro schools with that of similarly situated Negro students attending majority-white schools not offering compensatory programs. The four programs were conducted in Syracuse, N.Y.; Berkeley, Calif.; Seattle, Wash.; and Philadelphia, Pa.

The Madison Area Project was begun in Syracuse in 1962 in response to findings by educators there that students in predominantly Negro schools had serious academic problems. This project—modeled in part on the Higher Horizons Program—sought to raise the achievement of Negro students and improve their aspirations and motivation to learn.[50] To accomplish these aims the project provided cultural enrichment programs, special classroom groupings, remedial reading and special mathematical programs, summer schools, and other instructional improvements.[51]

The Madison Area Project was conducted in two elementary schools and one junior high school, each of which had a Negro enrollment exceeding 80 percent. Approximately 2,000 children participated in the program each year. It lasted nearly three years and cost $207,150 a year, or about $100 more per pupil than the normal allotment in the Syracuse schools [52]—about twice the additional expenditure involved in the Higher Horizons Program.

When Syracuse school officials evaluated the junior high school segment of the Madison Area Project, they found results similar to those in the Higher Horizons study. The relative academic standing of students in the Madison Junior High School and students in other junior high schools before and after the project was compared. The special cultural and educational programs aimed at raising the achievement of Negro students had had no apparent effect.[53]

In hearings recently held by the Commission, representatives of the Syracuse School System offered their conclusions about the effectiveness

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1966 was 2.3, which is a growth of 1 month; grade 2 would be 3.4 to 3.5 . . . grade 3, 4.0 to 4.1 . . . grade 4, 3.7 to 3.8 . . . grade 6, 5.1 to 5.2." Scores for the Higginson District (the only district in the program for 3 years) did not improve, however. Children in the 2nd grade in 1964 were ½ a year above the national norm; by 1966, at the end of 4th grade, they were ½ a year below the national norm. The pattern was similar for the 1966, 6th-grade class, which was 1 year behind in 1966. *Boston Hearing* at 163–167.

[50] Syracuse, N.Y., City School District, *Laboratory for Change,* 5 (1964).

[51] *Id.* at 9–21.

[52] Stout and Inger, *School Desegregation: Progress in Eight Cities,* a study done for the U.S. Commission on Civil Rights at V–54 (October 1966). Hereinafter cited as *Stout Study.*

[53] *Rochester Hearing* at 445. The comparison was between students at Madison and students at other junior schools which were majority-white.

of the program. Dr. Franklyn Barry, superintendent of schools, described the purpose and impact of the program:

> It attempted to provide a whole array of extra services, impact programs, to beef up, as it were, education in this area . . . it tried to invent some new things, and we had some very skilled people . . . (to) make education more attractive and meaningful to children. . . . I have a chart which shows that in 1964 . . . Madison School (students were) achieving at a substantially lower level (than students at other schools). In fact, there was some regression over the period in terms of achievement in the academic areas.[54]

In the elementary school segment of the Madison Area Project, remedial and cultural enrichment services were provided.[55] The Commission studied the academic effect of this program upon the students involved and compared their performance with Negro students of the same social class attending majority-white Syracuse elementary schools.[56]

Figure 1 shows the reading scores of students in the highest category within each group of Negro pupils in the Commission study. It shows the level at grades 3, 4, and 5.[57] The level was the same for both groups in the third grade—below the city average. By the fifth grade the level of the students receiving compensatory education in the majority-Negro schools had fallen about one-quarter of a grade level behind the Negro students attending majority-white schools. A similar pattern was found when the median achievement level for all students in each group was compared.[58]

A study conducted by the Syracuse Public Schools suggests the same conclusions. Negro students participating in the same compensatory program in majority-Negro elementary schools were matched with similarly situated Negro children bused to majority-white schools which had no compensatory education program. The Syracuse study found that over the course of a school year, the bused students achieved at a rate more than double that of the achievement rate of the students in the compensatory program. The Syracuse school superintendent discussed the findings at the Rochester hearing:

> [T]he 24 children who were bused . . . achieved . . . a total of 9.2 months' progress in reading (in one school year) while their matched counterparts (in the predominantly Negro school) . . . did but 4 months.[59]

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[54] *Id.* at 444–45.

[55] *Laboratory for Change, op. cit. supra* note 50, at 9. Croton and Irving were the elementary schools concerned.

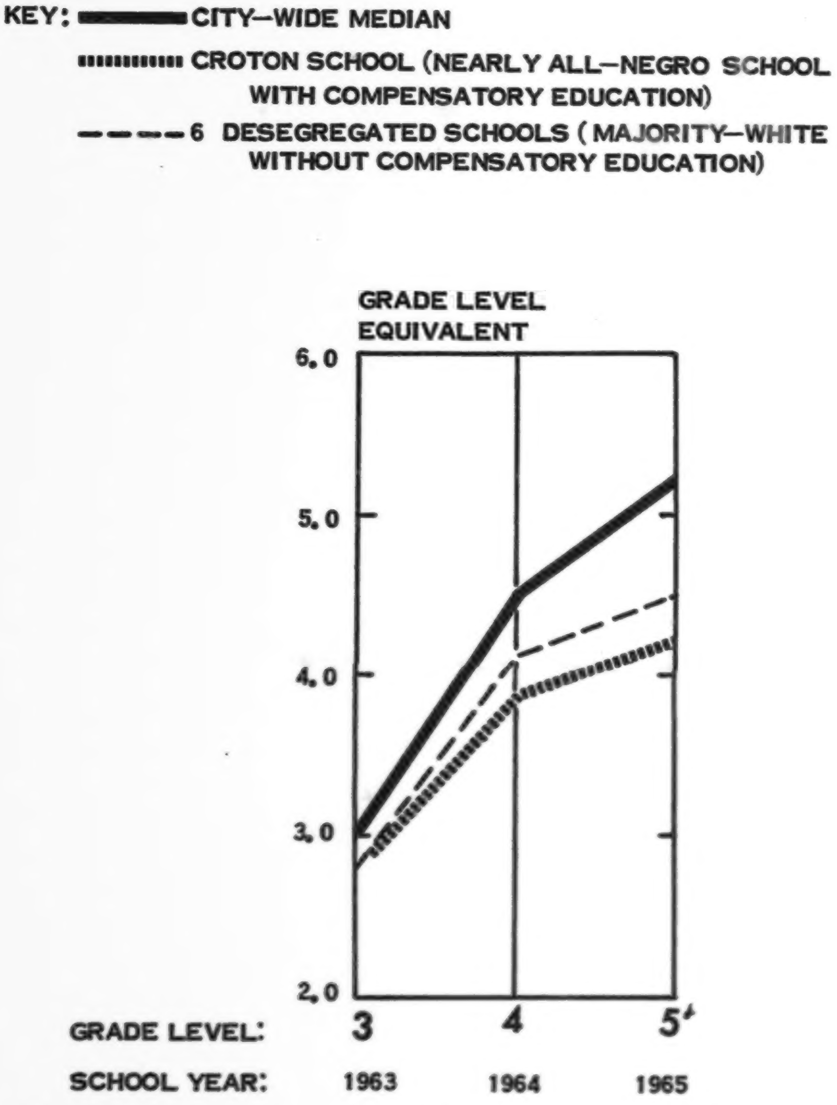
[56] *App. D–1,* Sec. B, at 247.

[57] *Ibid.*

[58] *Ibid.*

[59] *Rochester Hearing* at 450.

Figure 1: Highest ¼ of Students: Syracuse MAP Study (Grades 3-5)



Asked if he thought the compensatory programs in Syracuse could succeed in predominantly Negro schools, Barry replied:

> [I]f it were ultimately to be ghetto schools with the best of compensatory education, I would view this very, very dimly. . . . Compensatory services to upgrade (Negro) schools . . . or whatever you call them, no.[60]

During the past four years, the Berkeley, Calif., school system has instituted compensatory programs at four majority-Negro schools.[61] A wide range of techniques has been used, including the reduction of class size, employment of additional special staff, improvement of teaching materials, tutoring, community involvement, after-school study halls, preschool programs, flexible class grouping methods, new teaching techniques, and intergroup education for the teaching staff. As Berkeley Superintendent Neil Sullivan has said: "You name it, we've tried it or are trying it." [62]

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[60] *Id.* at 447.

[61] Letter from Superintendent Neil V. Sullivan, Berkeley Schools, to Bernard Berkin, U.S. Commission on Civil Rights, Nov. 17, 1966.

Although the Berkeley School System's evaluation of these programs to date is not complete, achievement test scores at predominantly Negro schools with compensatory programs reflect no improvement in the achievement of fifth-grade students over a three-year period. Fifth-grade students in 1965, after four years of compensatory programs, showed no greater achievement than 1962 fifth-grade students in the same schools. Neither was there any change in the fifth-grade reading level in the Negro schools relative to the fifth-grade reading level at predominantly white schools over the three years.[63]

During part of the 1965–66 school year, the Berkeley school authorities, with Federal assistance, bused 230 Negro children from majority-Negro to majority-white schools. Bused children in the third, fourth, and sixth grades were tested at both the beginning and the end of the six-month period and their scores compared with those of the children who remained in the majority-Negro schools where compensatory education was provided. Although the program has not been in effect long enough to permit a complete analysis, test scores show that the bused children progressed at a more rapid rate than the children who remained in the majority-Negro schools.[64]

Berkeley Superintendent Sullivan said of the compensatory education effort:

> Berkeley has had 4 years of experience with compensatory education under local, State, and Federal financing. As in other cities, high hopes have reaped an insignificant harvest. . . . Even where a token number of "chosen individuals" are "pulled up" by the bootstraps, or "pulled out of the ghetto," the mass of minority children remain in desperate isolation, unwelcome and destined to the self-fulfilling prophecy of youthful and adult failure. . . .[65]

The relative academic benefits of compensatory education and school desegregation also were examined in a study conducted by the Seattle Public Schools. To reduce class size at two majority-Negro schools in 1965–66, 242 children, most of whom were Negroes, in grades 1 through 6 were transferred from these schools to four nearly all-white schools. Children remaining in the majority-Negro schools received the benefits of intensive compensatory education and reduced class size. The transferred group attended schools with larger class sizes and no special compensatory programs.[66] Seventeen of the 38 transferred first-grade students were compared with a control group of 25 first graders who remained at the majority-Negro schools. Each group was tested at the beginning of the first and at the beginning of the second grade. Reading test scores revealed that the transferred group had achieved slightly more during the year than had the group receiving compensatory education.[67] The evaluation concluded:

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[62] *Ibid.*

[63] *Ibid.* The fifth grade scores at predominantly white schools were about the same in 1962 and 1965. They were slightly lower at the predominantly Negro schools in 1965 than in 1962.

[64] *Ibid.*

[65] *Ibid.*

> It was generally believed that the Transfer Program might have a deleterious effect on the achievement level of the pupils who were to be transferred. . . . The results in previous reports . . . [and] results for this evaluation, from grade 1 to grade 2, . . . do not support this. In fact these results . . . indicate a trend . . . that the Transfer Program had effected greater achievement among its pupils than among the Control Group.[68]

The Commission also conducted a study of compensatory education in Philadelphia, Pa. Philadelphia's Education Improvement Program (EIP) has been described as "one of the Nation's first extensive plans specifically designed to raise the achievement level of educationally disadvantaged children." [69] It was introduced in 1963 to first-grade students attending predominantly Negro schools in impoverished areas. First-grade achievement levels of most children in these schools were somewhat below grade level.[70] Each year the program was expanded until by 1965, 30,000 students from first grade through high school were participating.[71] The program was estimated to involve an additional annual per pupil expenditure of about $35.[72]

EIP sought to improve the reading achievement and enlarge the cultural horizons and aspirations of the affected students.[73] One critical aspect of the program was an effort to improve the quality of instruction. According to a Philadelphia school official, teachers in EIP schools generally are as able as the average teacher in the system.[74]

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[66] Planning and Research Department, Seattle Public Schools, *A Study of the Effects of the Seattle Public School Involuntary (Elementary School) Transfer Program 1965–66,* 6–8 (June 1966). See also Letter from Supt. Forbes Bottomly, Seattle Public Schools, to the U.S. Commission on Civil Rights (Nov. 10, 1966).

[67] Moore, *The Effects of the Elementary School Transfer Program on Achievement in the Second Grade* (an evaluation) (Nov. 10, 1966).

[68] *Ibid.*

[69] Office of Intergroup Education, School District of Philadelphia, *The Progress of Quality Education in the Public Schools, Particularly as Related to Recommendations in the Report of the Special Committee on Nondiscrimination* at 1 (Sept. 22 1965). Hereinafter cited as *Philadelphia Progress Report.*

[70] *Id.* at 2.

[71] *Id.* at 3.

[72] Staff interview with Margaret Ephraemson, coordinator, EIP, Philadelphia Public Schools, Jan. 16, 1967. Expenditures were reported to have been nearly twice as great in the early years of the program.

[73] *Philadelphia Progress Report at* 2–3.

[74] Staff telephone interview with Margaret Ephraemson, coordinator, EIP, Philadelphia Public Schools, Oct. 8, 1966. EIP teachers were reported to be younger than average, more responsive to the children and better equipped to handle complex subject matter.

To evaluate the effectiveness of this program, the Commission used existing test data and compared the achievement histories of three groups of Negro children: those in nearly all-Negro schools participating in the program; those in non-participating nearly all-Negro schools; and those bused to non-participating majority-white schools.[75] The Negro children who were bused to the majority-white schools were of the same social class level as those in EIP schools which were nearly all-Negro; the students in the nearly all-Negro non-participating schools were of a somewhat higher social class level.[76]

The reading achievement levels of the Negro children in these three groups were traced over a two-year period, from their completion of the first grade to their completion of the third grade. The analysis reviewed the test scores of the students in each group for the year before they entered the program, and for the first two years they were in the program. More than 4,700 students, in 40 schools, were included in the study.[77]

The analysis disclosed no evidence that the Educational Improvement Program raised the average reading achievement in EIP schools. The median achievement of children in EIP schools continued to fall consistently behind that of children in the other two sets of schools and continued to be lower after they had received two years of compensatory education.[78]

Figure 2 shows the reading scores of children in the lowest achievement groups in both EIP schools and nearly all-Negro schools without EIP. The reading level of the EIP children in this category was over a year behind grade level at the end of the first year and at the end of the third year. The gap between the reading level of the non-EIP children in this category and grade level was nearly as great. Their reading level, however, was slightly higher than that in the EIP schools at the first grade, and remained so at the end of the third grade.

Figure 3 compares the reading scores of the highest achieving group of students in the two types of nearly all-Negro schools. The level of the EIP group in this category was above grade level in grade one but about one-quarter of a grade behind that of the non-EIP group in the same category. Their relative position was unchanged by the third grade. Over the two-year period the rate of progress for both groups slowed, though it remained above grade level.

Thus, regardless of whether the EIP students began school with high or low reading ability, the program did not close the gap in performance

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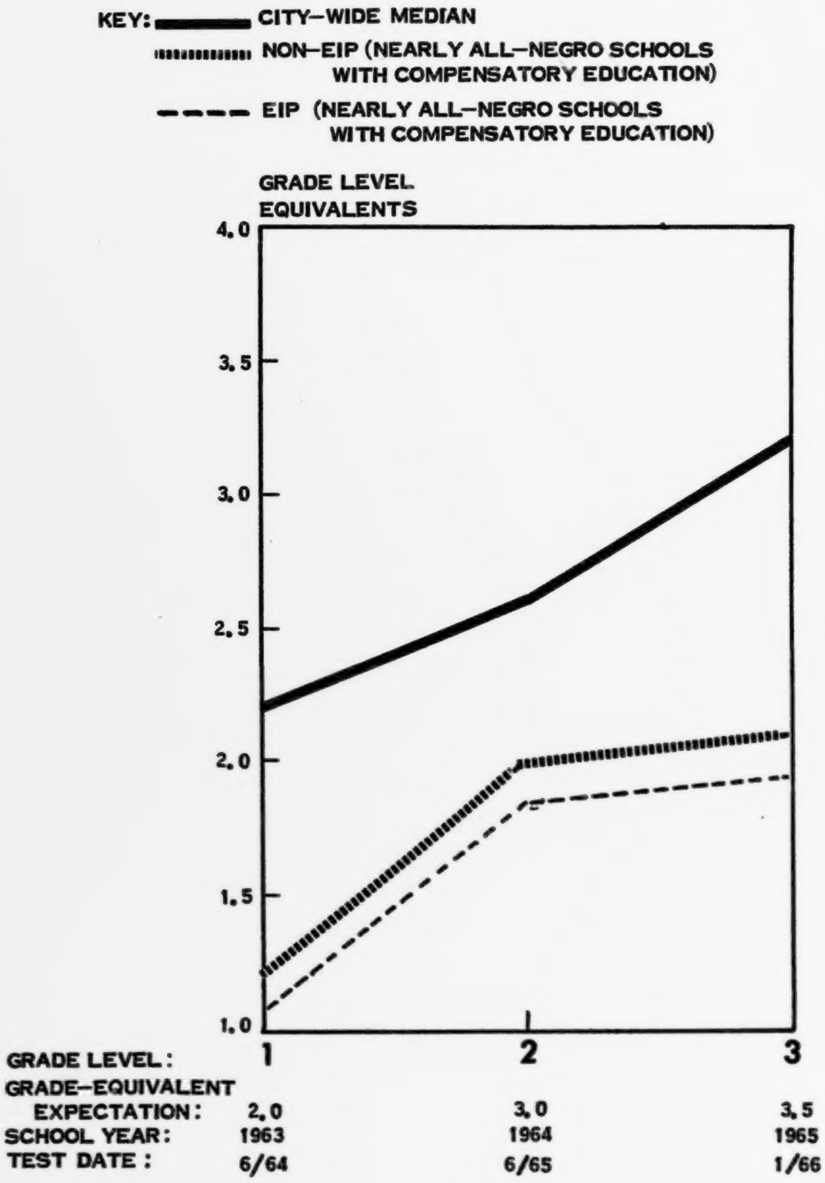
[75] *App. D–1*, Sec. A, at 243.

[76] Twelve of the fifteen EIP schools were in census tracts where in 1960 median income was 30 percent or more below the city median. The remaining three were in tracts 11–30 percent below the city median; of the 10 nearly all-Negro non-EIP schools, four were in tracts from 10 percent below to 10 percent above the city median; one was 11–30 percent above the city median. U.S. Bureau of the Census, Census Tracts, Philadelphia, 1960.

[77] *App. D–1*, Sec. A, at 243, 251 (Table 7).

[78] *Id.*, at 245.

Figure 2: Lowest ¼ of Students: Philadelphia EIP Study (Grades 1-3)



between them and the Negro students of slightly higher social class in nearly all-Negro schools without the compensatory program.

The Commission also compared the performance of the EIP students and the students in nearly all-Negro non-EIP schools with the performance of the Negro students bused to majority-white non-EIP schools. The bused children were of the same social class level as the Negro students in the compensatory program. The first-grade reading levels of the bused students also were identical to those of the EIP students but below those of the Negro students in the nearly all-Negro non-EIP schools.

Figure 3: Highest ¼ of Students Philadelphia EIP Study (Grades 1-3)

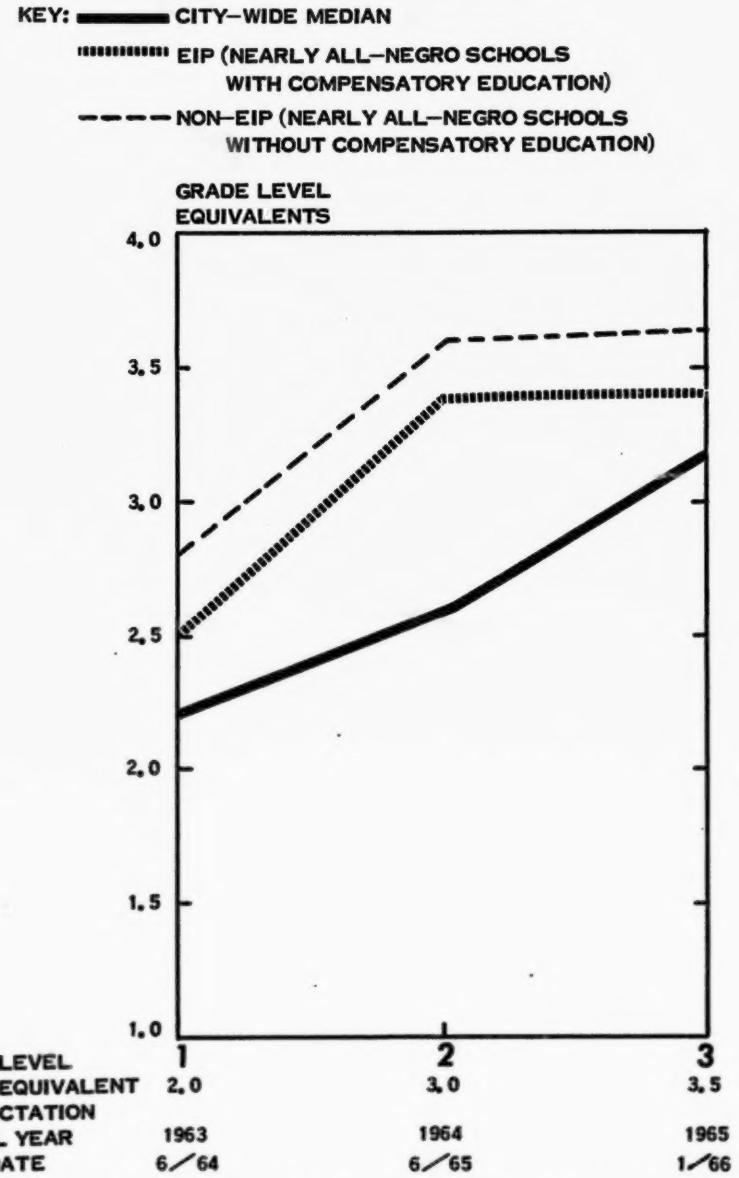
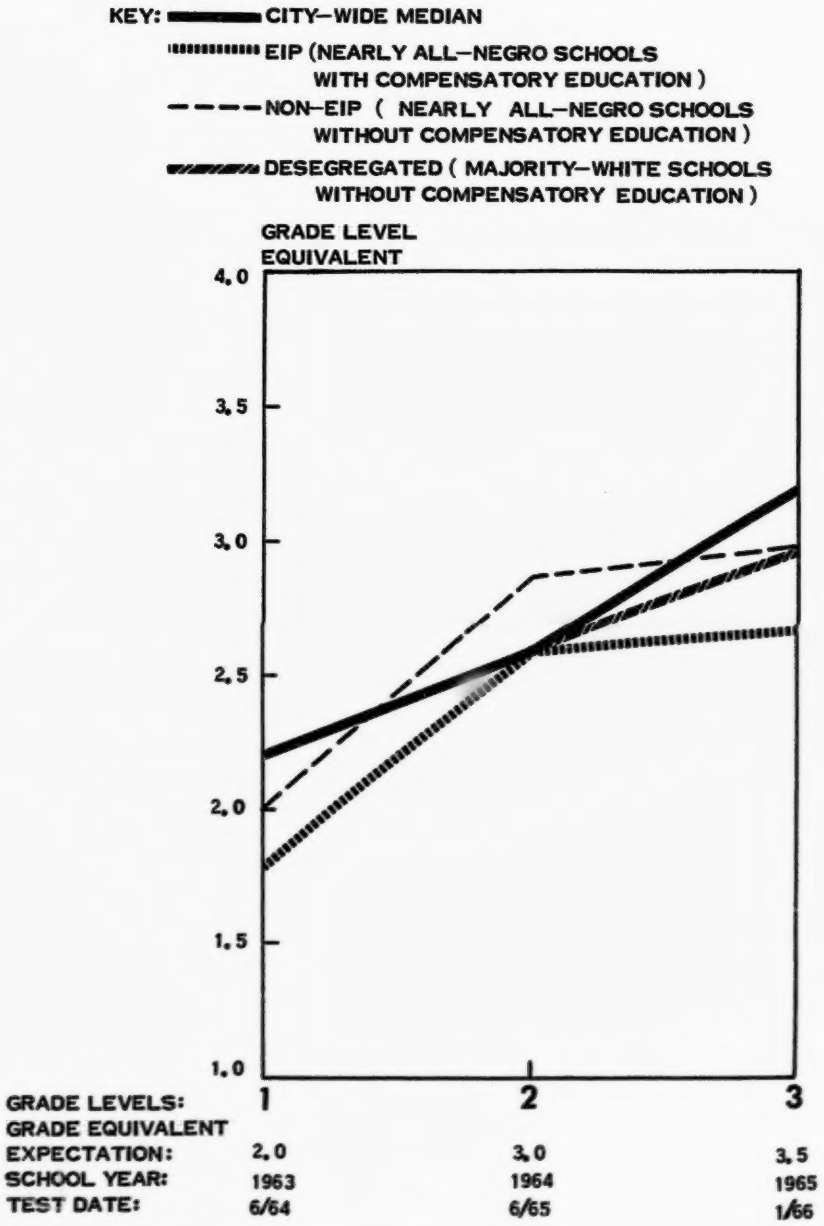


Figure 4 shows that by the third grade the median reading level of the bused students had surpassed that of the EIP students, and had climbed to a position equal to that of the students of slightly higher social class in the nearly all-Negro schools without the EIP program.

Figure 5 compares the reading achievement of students at the highest ability level in all three types of schools. It shows that all three groups of students were above grade-level at the first grade. The levels in the EIP and majority-white schools were about the same, both more than one-quarter of a year behind the more advantaged students in majority-Negro non-EIP schools. By the third grade Negro students in the majority-white schools had closed the gap between themselves and the

Figure 4- Median for All Students: Philadelphia EIP Study (Grades 1-3)



Negro students in the non-EIP schools. Yet the Negro students in the EIP schools had not closed that gap, and were still behind the students in the non-EIP schools.[79]

The Educational Improvement Program, then, did not improve the general levels of academic achievement for Negro students in nearly all-

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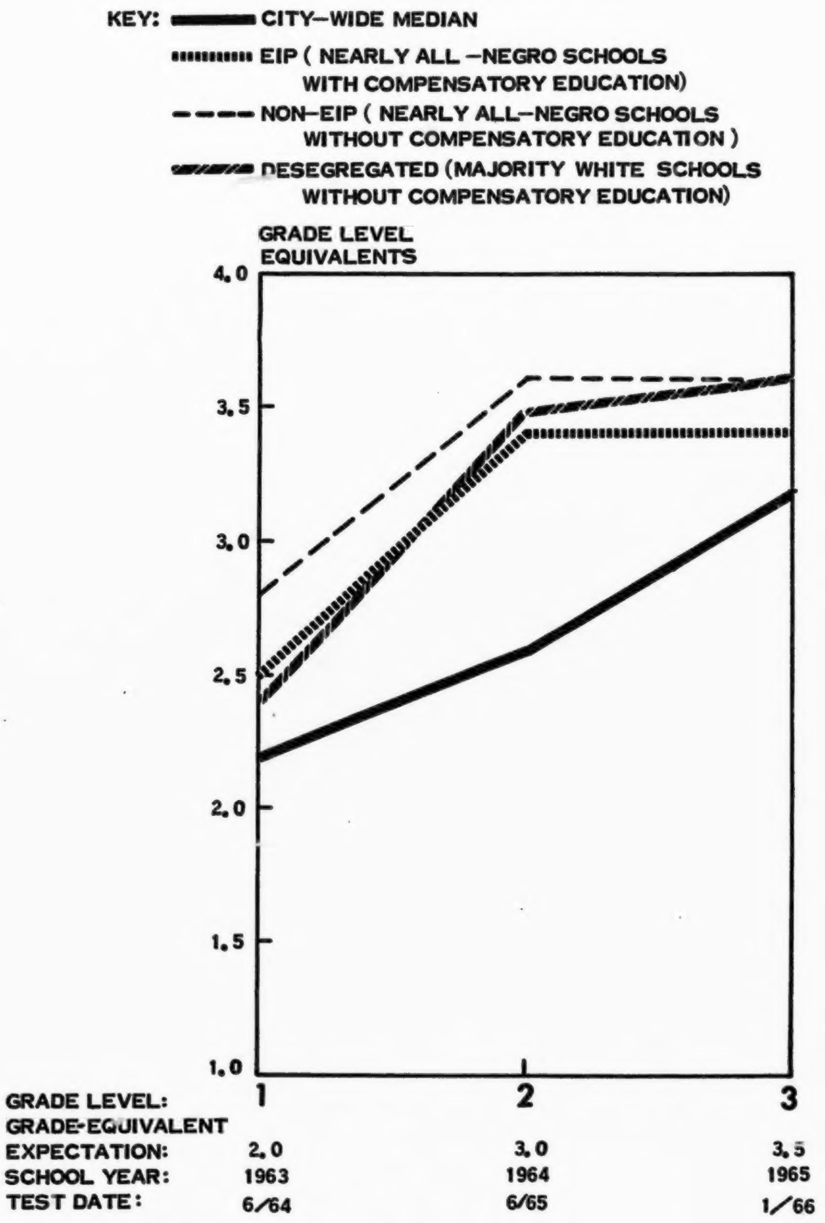
[79] The achievement gains for bused students were not in evidence, however, for children with the most severe academic disadvantage. Dr. Marvin Cline, who conducted the Commission study, concluded: ". . . neither the compensatory program of EIP nor simple desegregation is adequate to stem the tide of academic deterioration of the lowest scoring groups." *Id.* at 246.

Figure 5- Highest ¼ of students: Philadelphia EIP Study (Grades 1-3)



Negro schools. This failure might be attributed to inadequate funding or to other weaknesses in the program. A better quality of education or other factors may account in part for the gain in achievement of the Negro students bused to majority-white schools. But the goal of the EIP program was "to raise the achievement level of educationally disadvantaged children." [80] By this standard, it did not succeed.

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[80] *Philadelphia Progress Report* at 1. The director of the EIP program has said that she feels the program has improved student performance, although she has no data to support her belief. Staff interview with Margaret Ephraemson, Jan. 16, 1967.

In the above review of compensatory education in majority-Negro schools the programs examined were among the most prominent and included some that have served as models for others. A principal objective of each was to raise the academic achievement of disadvantaged children. Judged by this standard the programs did not show evidence of much success.

The Commission's analysis does not suggest that compensatory education is incapable of remedying the effects of poverty on the academic achievement of individual children. There is little question that school programs involving expenditures for cultural enrichment, better teaching, and other needed educational services can be helpful to disadvantaged children. The fact remains, however, that none of the programs appear to have raised significantly the achievement of participating pupils, as a group, within the period evaluated by the Commission.

One possible explanation is that compensatory programs do not wholly compensate for the depressing effect which racial and social class isolation have upon the aspirations and self-esteem of Negro students—factors which, as Chapter 3 indicates, have an important influence upon academic success.

Recognizing the link between a student's achievement and his aspirations, motivation, and self-esteem, administrators of compensatory programs have attempted to raise the achievement of disadvantaged children by lifting their aspirations and their motivation to learn through "ego development" programs which may involve such measures as encouragement of self-expression and the study of Negro history.[81]

Yet the evidence reviewed here suggests that efforts to improve a child's self-esteem cannot be wholly productive in a student environment which seems to deny his worth. Testimony heard by the Commission that majority-Negro schools were stigmatized and regarded as inferior included schools which had compensatory programs. Indeed, in one community the Commission was told that the contrasts afforded by inter-school trips between white and Negro students under compensatory programs heightened the sense of inferiority felt by the Negro students.[82] In another community, a Negro teacher was asked whether she thought that putting a compensatory program in a predominantly Negro school tends to increase the stigma attached to such a school. The witness replied:

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[81] One of the objectives of a creative arts center which is part of San Francisco's compensatory program is "positive development of the self-concept." San Francisco Unified School District, *Evaluation Report, Proposal Number 38–010* 76 (Sept. 1, 1966). In Philadelphia compensatory programs, devices such as displays emphasizing the contribution of Negroes to American life and displays of student art work are used to "raise aspirational levels beyond those held by the child's immediate social environment." School Community Coordinating Team of the Philadelphia Public Schools, *The Great Cities School Improvement Program, a Progress Report, 1960–64* at 45–56 (1965).

[82] See ch. III, note 99, *supra.*

> I think it does to the outside community because what they ask is, you know, why are they spending all this money in these schools. Those children must not know very much, so they have to put this money in.[83]

Thus, the compensatory programs reviewed here appear to suffer from the defect inherent in attempting to solve problems stemming in part from racial and social class isolation in schools which themselves are isolated by race and social class.

It is too early to conclude whether more recently instituted programs such as the preschool projects funded as part of Head Start will yield different results. Tentative analyses of these programs have suggested that they have been initially successful but that much of the benefit has been lost when children have entered the regular grades of the public school system.[84]

Preschool programs deal with children who have no prior school experience, and children in these programs are approached at an age when they are more apt to be influenced by adults than by other children. In addition, preschool programs often have advantages which schools ordinarily cannot offer. Pupil-teacher ratios are much lower than in most schools and the programs often are able to recruit highly skilled teachers. Children in preschool programs are offered a variety of services, including those which deal with their medical and nutritional problems. Parents frequently are deeply involved in the programs, which, like many other new ventures, often are conducted with greater enthusiasm than is characteristic of more established schools.[85]

After assessing the initial success of preschool programs, however, some authorities, such as Sargent Shriver, Director of the Office of Economic Opportunity, and Harold Howe II, U.S. Commissioner of Education, have concluded that the positive effects of preschool education are lost when the children begin the elementary grades. Accordingly, they have called for major new programs aimed at reducing pupil-teacher ratios in regular schools by more than half.[86] Such a step, of course, would involve major expense. One authority has estimated that the cost of reducing the pupil-teacher ratio from 25–1 to 15–1 would be about $340 per pupil—an increase in per-pupil expenditure of approximately two-thirds in the average school.[87] While programs of such magnitude undoubtedly would result in improved performance for many students, whether they would be sufficient to overcome the effects of racial and social class isolation is speculative.

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[83] *Rochester Hearing* at 83. See also Rivlin, *Teacher Education*, vol. XVI, No. 2, 183 (June 1965): "Once the city schools give parents the impression that the schools are concerned solely with compensatory education, middle-class parents—white, Negro, Puerto Rican, and Mexican—who have educational ambitions for their children will continue, and possibly even accentuate, the present trend of withdrawing their children from the city's public schools and either enrolling them in private schools or moving to the suburbs."

[84] See, for example: *Education: An Answer to Poverty, op. cit. supra*, note 2 at 21; Wolff and Stein, *Six Months Later*, 141–61, Study I (Aug. 18, 1966); Wolff and Stein, *Long-Range Effect of Preschooling on Reading Achievement*, OEO project 141–61, Study III; Gordon, *Remarks on the Max Wolff Report* (undated). Evaluations of preschool programs in Fresno, Calif., and Racine, Wis., reported similar results. Significant test gains were reported for project children; however, these gains were lost shortly after the children entered the normal school program. Fresno City Unified School District, *Statistical Data From Pilot Project in Compensatory Education* (June 4, 1965); Unified School District No. 1, Racine, Wis., *Final Report, A Pilot Project for Culturally Deprived Kindergarten Children* (undated).

[85] *Education: An Answer to Poverty, op. cit. supra*, note 2 at 20–34. A general description of the content of the programs is given.

Short of such steps, the evidence reviewed here strongly suggests that compensatory programs are not likely to succeed in racially and socially isolated school environments.

School Desegregation

This portion of the chapter examines particular techniques employed by school systems to desegregate their schools. It also assesses efforts to combine school desegregation with measures to improve the quality of education.

School Desegregation: Extent and Techniques

The effectiveness of a particular school desegregation technique depends in part upon the characteristics of the city involved. One important factor is the proportion of the school population which is Negro. The greater the proportion, the more extensive the changes which may be necessary to accomplish desegregation. A second is the size of the city.

Most small cities have relatively small Negro populations. In addition, small cities generally have relatively small areas of high-density Negro population. Thus, desegregation may not require as substantial an adjustment in the distances which students must travel to school as may be required to accomplish desegregation of students in a larger city. For these reasons, it may be easier in smaller cities to achieve desegregation by devices such as strategic site selection, redistricting, or the enlargement of attendance areas.

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[86] U.S. Commissioner of Education Harold Howe has called for per-pupil expenditures of about $1,200 and reduction of class size to about 15. Howe stated that preschool programs could do more harm than good unless they are followed up in the elementary schools. Washington Post, Dec. 7, 1966. Sargent Shriver, Director of the Office of Economic Opportunity, expressed support for Howe's statements. Letter to the editor, New York Times, Dec. 16, 1966.

[87] Moynihan, *The Crisis of Confidence,* statement presented to the Subcommittee on Executive Reorganization of the U.S. Senate Committee on Government Operations at 10 (Dec. 13, 1966). Moynihan states that the current pupil-teacher ratio in public schools is 24.6 to 1. The current per-pupil expenditure in average daily attendance is $532.

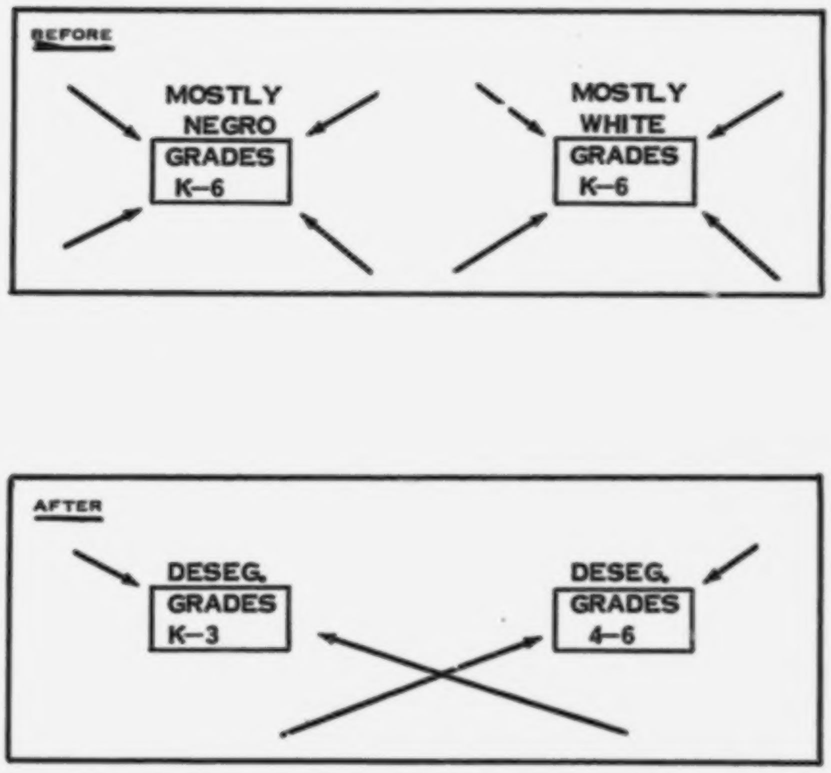
Small Cities and Suburbs

A number of small Northern and Western communities have desegregated their schools successfully. In some, desegregation has been limited to particular grade divisions. In others, desegregation of all grades has been achieved. Smaller communities have used a variety of techniques to accomplish desegregation, but a common element is the enlargement of attendance areas to overcome the obstacle of residential segregation. Among these devices are "pairing," the establishment of "central" schools, and the closing of a majority-Negro school and dispersal of its students among other schools in the community.

Pairing

Pairing involves merging the attendance areas of two or more schools serving the same grades to achieve better racial balance. As Illustration 1 shows, children in particular grades are assigned to one school and those in the remaining grades are assigned to the other school.

Illustration 1. Pairing



BEFORE PAIRING, STUDENTS ENROLL ACCORDING TO EACH SCHOOL'S ATTENDANCE AREA. AFTER PAIRING, STUDENTS OF BOTH ATTENDANCE AREAS ENROLL IN THE TWO SCHOOLS ACCORDING TO GRADE.

School pairing was introduced in 1948 in Princeton, N.J., a community which had been served by two elementary schools, one nearly all-white and the other Negro. The school system merged the attendance areas of the two schools and assigned all students in grades K–5 to one school and all students in the remaining grades, grades 6–8, to the other. As a result of the pairing, each of Princeton's elementary schools became majority-white.[88]

Greenburgh No. 8 is a school district in a small New York suburban community. The district has a population of approximately 17,000 and a school enrollment 37 percent Negro. In 1947, four years before it desegregated, Greenburgh No. 8 had three elementary schools, which were 25 percent, 60 percent, and 97 percent Negro. The school board recommended busing students from the overcrowded majority-white school to the under-utilized majority-Negro schools. Members of the community objected and asked that alternatives be submitted to 14 civic organizations. One of the alternatives was pairing, which was accepted by 13 of the 14 organizations. The district's three elementary schools were paired by establishing one as a K–3 school, the second as a 4–6 school, and the third as a 7–9 school. After pairing, each of the schools opened with enrollments approximately 38 percent Negro.[89]

The small town of Coatesville, Pa., also desegregated its elementary schools through the device of pairing. Of the city's four elementary schools, one was nearly all-Negro and another was 98 percent white. In 1962, these two schools were paired. One of the schools became a K–3 school and the other a 4–6 school. As a result of the pairing both schools became approximately 40 percent Negro.[90]

Central Schools

The Princeton and Greenburgh examples show that in very small communities pairing may result in the establishment of central schools whereby one school building becomes a central facility for several grades servicing the entire school district. In communities which have a larger number of schools, central schools also can be established by making the whole district a single attendance zone for all students in one or two grades. In this way, the grades served by the central school are fully desegregated and resegregation that might otherwise occur through shifts in racial residential patterns within the community is precluded.

In Englewood, N.J., a residential suburb of New York City, the five elementary schools were highly segregated before 1963. Two of the schools were majority-Negro and the remaining three nearly all-white.[91] In 1964, the board assigned all sixth-grade students to a single school and changed each of the remaining schools from K–6 to K–5 schools. As a result, one school (K–5) remained majority-Negro. In 1966, the board expanded its central school plan by adding a second central school. Both central schools now teach the fifth and sixth grades. The remaining schools became K–4 schools. As a result, the majority-Negro K–5 school became a majority-white central school. One of the remaining K–4 majority-white neighborhood schools, however, became majority-Negro in the interim.[92] Because the attendance areas of the K–4 schools were enlarged, a greater number of students in grades K–4 lived more than a mile from school and had to be transported. The school system augmented its annual budget by $24,000 to meet the increased transportation expense.[93]

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[88] Street, *Princeton's Lesson: School Integration Is Not Enough*, New York Times, June 21, 1964 (magazine).

[89] *Stout Study* at II–3–4; 22; 7–8; 22–23.

[90] *Id.* at IV–8; racial composition at IV–10–12.

[91] *Id.* at VIII–95.

A similar plan for the three junior high schools in Berkeley, Calif., was implemented in 1964. Berkeley is a city which has a population of about 120,000. In 1963, it had a 39 percent Negro enrollment in its junior high schools. One of the junior high schools was majority-Negro.[94] In 1964, this school was converted into a citywide ninth grade school, and the attendance areas of the two other junior highs (now serving grades 7 and 8) were expanded. As a result, in 1965, all junior high schools were 38 to 47 percent Negro.[95]

Teaneck, N.J., a suburb of New York City, also desegregated its elementary schools by establishing central schools. Prior to 1964, six of Teaneck's eight elementary schools were all white; one (Washington Irving) was 39 percent Negro, and another (Bryant) was majority-Negro. In 1964, the Teaneck School Board voted to convert Bryant into a central sixth-grade school serving all children in the city. Bryant students in grades 1 to 5 were assigned to the six previously all-white schools. The board also expanded the attendance area of the Washington Irving School to include more white children.[96] The major expenditure in the Teaneck plan has been for transportation. During the 1966–67 school year, 11 buses are being used to transport the school children.[97]

School Closing

Another means of desegregating schools by enlarging attendance areas is the closing of a particular school and the dispersal of its students among the remaining schools. This is shown in Illustration 2. Desegregation of the Syracuse, N.Y., junior high schools was accomplished in this way. Syracuse is a medium-sized city which in 1960 had a population of about 216,000. Fifteen percent of its junior high school enrollment was Negro in 1965. Of the city's 12 junior high schools, 11 had racial compositions ranging from 69 to 100 percent white in the fall of 1964. The 12th—Madison Junior High—was 77 percent Negro. In 1965, Madison was closed and its approximately 345 students were bused to other junior high schools. As a result, in 1965, none of the Syracuse junior high schools had a Negro enrollment greater than 34 percent.[98]

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[92] *Id.* at VIII–63, 68–70; racial composition for 1966 from interview with Superintendent Shedd, Englewood, Jan. 4, 1967. The Cleveland school is now 52 percent Negro.

[93] *Id.* at VIII–85.

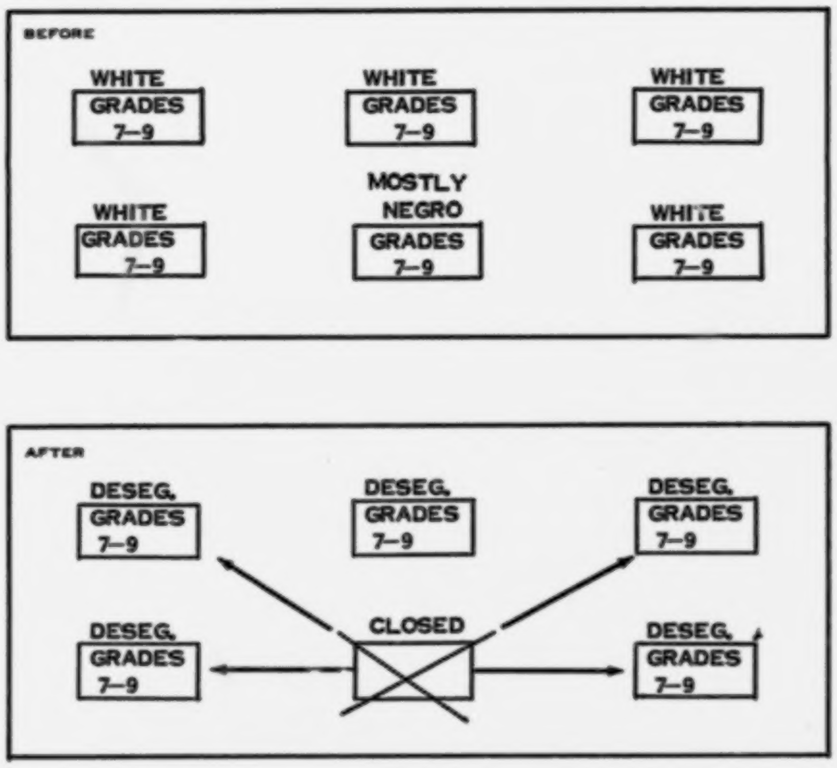
[94] *Id.* at VII–7; 166.

[95] *Id.* at VII–99; 166. In 1963, prior to desegregation, the three junior high schools in Berkeley were: Burbank, 76.0 percent Negro; Garfield, 4.8 percent Negro; Willard, 45.5 percent Negro. In 1965, after desegregation, the three schools were: West Campus (formerly Burbank), 39.5 percent Negro; Garfield, 38.4 percent Negro; Willard, 47.4 percent Negro.

[96] *Id.* at VI–29–30; 39; 20–23.

[97] *Id.* at VI–37–38.

ILLUSTRATION 2. SCHOOL CLOSING


BEFORE
WHITE
GRADES 7–9
WHITE
GRADES 7–9
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GRADES 7–9
MOSTLY NEGRO
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WHITE
GRADES 7–9
AFTER
DESEG.
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DESEG.
GRADES 7–9
DESEG.
GRADES 7–9
DESEG.
GRADES 7–9
CLOSED
DESEG.
GRADES 7–9

THE PREDOMINANTLY NEGRO JUNIOR HIGH SCHOOL IS CLOSED AND THE STUDENTS ARE BUSED TO OTHER SCHOOLS.

In White Plains, N.Y.—a city of about 50,000 people—school officials have used a number of devices to desegregate the schools. During the 1957–58 school year when the board was considering replacement of the city's one overcrowded high school, it rejected a proposal to build two high schools for fear they would become racially imbalanced. Instead, in 1959, the old school was replaced with one new high school, which in 1965 was 14 percent Negro. The city's three junior high schools were desegregated in 1960 by adjusting the boundaries of their attendance areas.[99]

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[98] *Id.* at V–109; 69–70; 19; 21.

Desegregation of the elementary schools in White Plains presented a somewhat more difficult problem. One of the elementary schools in the city, Rochambeau, was majority-Negro. In 1960, the school board attempted to reduce racial imbalance at the Rochambeau school by changing its attendance area, estimating that with the new boundaries, the school would open majority-white. Racial changes in the neighborhood, however, nullified the school administration's effort, and Rochambeau opened majority-Negro. In 1964, although White Plains already had a high per-pupil expenditure and there was opposition in the community based in part on fear of increased costs, the Rochambeau school was closed and its students assigned—most transported—to each of the remaining 10 elementary schools. Before the closing of Rochambeau, one of the elementary schools had been 100 percent white and five had been 90 to 99 percent white. As of April 1966, all 10 elementary schools in White Plains ranged from 15 percent to 30 percent Negro.[100]

Thus there have been several examples of successful school desegregation in smaller communities.[101] A variety of devices has been used, individually or in combination, but in each case a major element has been the enlargement of the attendance areas and a return to the older concept of the community school, where a more representative cross section of a city's children attended school together.

In the cases studied by the Commission, desegregation of the schools generally has been regarded by the communities involved as successful. Educators in these communities have expressed the view that the desegregation plans on the whole have been implemented successfully, although the Commission's study reveals that much remains to be done before racial isolation in the schools is completely eliminated.[102] In most cases—even where there was initial opposition—desegregation has won acceptance from parents and civic groups. In those cases where information is available, the Commission has found no evidence that white parents have withdrawn their children from the public schools in any significant numbers.[103] In most cases, opposition has subsided and there is general community support for desegregation.[104]

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[99] *Id.* at I–4; racial composition of schools (*Id.* at I–16). The old high school was converted to a junior high and one all-white junior high school converted to an elementary school before rezoning.

[100] *Id.* at I–4–5; 7–8; 12; racial composition of schools (*Id.* at I–34). See also White Plains Public Schools, *The White Plains Racial Balance Plan* (May 9, 1965).

[101] Other communities which successfully desegregated include Riverside, Calif., and Morristown, N.J. See Duster, *Violence and Civic Responsibility*, a special report prepared for the *OE* Survey (March 1966). See also Desegregation, Ten Blueprints for Action, *School Management* 97–98 (October 1966); "What Morristown, N.J. Is Doing About Desegregation," *School Management* (March 1964).

[102] In Berkeley, White Plains, and Greenburgh homogeneous ability grouping remains a problem at the high school level. In Syracuse and Berkeley desegregation has not reached all elementary grades. *Stout Study*, IX–18.

Larger Cities

The success that some small cities have experienced in desegregating their schools has not been matched in the Nation's larger cities where the obstacles to desegregation are greater. In a large city, depending on the particular pattern of residential segregation, both Negro and white population areas may be more extensive in territory. For example, San Francisco has relatively small Negro areas spread throughout the city while Cleveland's Negro population is concentrated heavily in a large ghetto on one side of the city. In a city such as Cleveland, then, the bulk of the Negro population lives relatively farther away from the bulk of the white population. In addition, there have been frequent shifts in the racial character of neighborhoods in large cities. For these reasons, it may be more difficult to achieve school desegregation through strategic selection of school sites, adjustments in attendance area boundaries, or devices which involve enlargement of attendance areas.

Beyond this, the rising Negro population in larger cities makes school desegregation more difficult simply because Negroes tend to constitute a greater proportion of the student enrollment than they do in small cities. This is not universally true. In Boston and Milwaukee, for example, Negroes constitute a relatively small proportion of the school enrollment. But in many large cities, such as Chicago, Baltimore, Detroit, and Philadelphia, the Negro elementary school enrollment already is so great that it is impossible even theoretically to eliminate majority-Negro schools without the cooperation of the suburbs.

Efforts to reduce racial imbalance in most big cities fall generally into three categories: (1) those which seek to reduce imbalance without altering existing attendance areas; (2) those which alter or enlarge attendance areas; and, (3) those which involve cooperation between suburban and central city school jurisdictions.

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[103] Racial enrollment statistics collected in the Stout study do not reveal any large-scale withdrawal of white children from the public schools. For example, in Englewood, N.J., before desegregation there were 1,271 white elementary school students (1962). In 1965, after the creation of the first central grade school, there were approximately 1,300 white elementary grade students. (See *Stout Study,* VIII–95; 98.) See also racial enrollment statistics for White Plains (*Supra* I–34); for Greenburgh No. 8 (*Supra* II–37); in Syracuse, white enrollment did not decline at the junior high level when complete desegregation was accomplished. (*Supra* V–69–70.) The Berkeley schools experienced an increase in white enrollment in the 1966–67 school year. Dr. Thomas D. Wogmann, Administrative Assistant to the Superintendent, reported to the Berkeley school board: "The unsupported allegations of a mass Caucasian exodus to the suburbs because of integration is simply not borne out." Oakland Tribune, Dec. 21, 1966.

[104] In Berkeley an attempted recall of school board members failed and a subsequent bond issue was passed. In Teaneck, pro-desegregation board candidates were re-elected. In Englewood, Teaneck, White Plains, and Syracuse, law suits were either dropped or won by the school boards. (*Stout Study* at XII–17–18.)

School Desegregation Without Altering Attendance Areas

A number of big city school systems have attempted to reduce racial imbalance without altering established attendance areas. Devices used include open enrollment and busing.

Open Enrollment.—An open enrollment plan permits a student to attend an underutilized school outside of the attendance zone in which his residence is located. The purpose of such a plan may be to grant pupils a choice of schools, to relieve racial imbalance, or both.

Under some open enrollment plans, transportation costs must be paid by a family wishing to send its child to a school outside the neighborhood. This is the policy in Boston, where, after school authorities refused to provide transportation, a private busing program—Operation Exodus—was organized and supported by Negro parents in the Roxbury area with the help of contributions from various sources. Operation Exodus sponsored transportation for almost 600 Negro students who transferred from predominantly Negro to predominantly white schools during the 1965–66 school year.[105] Nevertheless, the requirement that transportation expenses be paid by the family imposes obvious limitations on achieving significant desegregation. At its Boston hearing, the Commission heard testimony concerning the difficult financial circumstances under which Operation Exodus was operating in the 1966–67 school year.[106]

Open enrollment plans also are subject to limitations imposed by available space. As part of an overall plan to alleviate racial imbalance, the school board in Rochester, N.Y., adopted in 1963 an open enrollment plan under which transportation was furnished by the school system. The Rochester school superintendent told the Commission of his desire to see open enrollment work in his city:

> When the Board of Education on November 16, 1963, passed unanimously a resolution directing me to prepare administrative regulations to institute open enrollment, I was determined that it was going to work, not to fail.
>
> I analyzed why open enrollment had failed in many other cities and there were two basic reasons: One, the transportation costs became a burden for the family. . . . Second . . . open enrollment programs suggested in this country failed because the burden was placed on the parent to walk to the school and up to the counter of the secretary or principal and to say, "I want open enrollment," to say it verbally, to come and make personal application. And I vowed to eliminate both those hurdles.[107]

The school system sent letters to parents of children in certain schools located in Negro residential areas, offering the opportunity to transfer.

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[105] U.S. Commission on Civil Rights, *Staff Report on Issues Related to Racial Imbalance in the Public Schools of Boston, Mass.*, 28. [Hereinafter cited as *USCCR Staff Report, Boston.*]

[106] Testimony of Mrs. Ellen Jackson, *Boston Hearing*, 270, 278. Testimony of the Honorable Senator Edward Kennedy, *supra*.

[107] *Rochester Hearing*, 332.

Negro families in significant numbers—more than a thousand—applied. But owing to limitations on the capacity of the receiving schools, only 660 applications could be accepted.[108] Thus even where transportation costs are paid by the school system, open enrollment is limited by the space available in the predominantly white schools.

Open enrollment also has other limitations which restrict its effectiveness as a device to reduce racial imbalance. While experience in Boston and Rochester has shown that many Negro families take advantage of open enrollment, others do not. The reasons are varied. Many Negro families, like many white families, prefer to have their children attend a school close to home. As suggested in Chapter 3, moreover, racial isolation tends to foster negative attitudes toward desegregation for Negroes as well as white persons. Again, Negro parents who gladly might participate in a desegregation plan affecting the entire community may be reluctant to require their children to assume the role of pioneers in an almost all-white school and they may resent being forced to assume the entire burden of desegregation themselves.[109]

There are other limitations inherent in open enrollment. As an advisory committee to the Massachusetts State Commissioner of Education wrote: "Open enrollment alone cannot achieve school integration. Relying on open enrollment places the responsibility for school integration on the uncoordinated actions of thousands of parents, rather than on the planned actions of the schools themselves." [110]

Another drawback of open enrollment is that it does not improve the racial balance of majority-Negro schools. Indeed, where the plan permits white students as well as Negro students to transfer, the result may be to increase isolation at predominantly Negro schools by permitting white students to transfer out of such schools.[111] Still another problem

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[108] U.S. Commission on Civil Rights, *Staff Report on Issues Related to Racial Imbalance in the Public Schools of Rochester and Syracuse, N.Y.*, at 24. [Hereinafter cited as *USCCR Staff Report, Rochester and Syracuse.*] Six hundred sixty transfers were accepted for the first year. The weekend before the transfers were to take place, threatening phone calls to Negro parents caused over 100 children to drop out of the program. (See: *Stout Study* at III–5).

[109] See, for example, staff interview with Rev. Franklin D. R. Florence, president, FIGHT, Rochester, N.Y., June 19, 1966.

[110] Advisory Committee on Racial Imbalance and Education, Massachusetts State Board of Education, *Because It Is Right—Educationally*, at 4 (April 1965). [Hereinafter cited as *Because It Is Right.*]

[111] The table below shows the change in racial composition of sending schools after Rochester began open enrollment in 1963.

School	Percent nonwhite in 1962-63	Percent nonwhite in 1965-66
2	89.8	97.4
3	95.3	96.8
4	92.0	97.0
6	*93.8	96.6
9	90.1	98.9
14	82.1	89.9

Source: *Stout Study*, III–7. *1963–64.

is that open enrollment may drain from majority-Negro schools the students who have the highest aspirations.[112]

Busing.—Some school systems have sought to relieve racial imbalance by transporting Negro children from their normal attendance areas to predominantly white schools in other parts of the city. For example, in Portland, Oreg.,—a city with an elementary school enrollment of 54,717 of which 4,482 are Negro—some 400 elementary school children, 90 percent of whom are Negroes, currently are being bused with Federal financial aid to 34 white schools outside their regular attendance areas. A Portland school official has acknowledged, however, that busing has not significantly affected the racial composition of Portland's elementary schools because so few children are involved.[113]

In Philadelphia, more than 9,000 elementary and junior high school children—of a total elementary and junior high school enrollment of more than 200,000—are being bused during the 1966–67 school year, both to relieve overcrowding and to reduce racial imbalance. Almost 7,000 of the bused students are from schools that are more than 90 percent Negro. In Philadelphia, 66 percent of the Negro children attended such schools at both the elementary and junior high level in 1965. Approximately 55 percent of the children from the schools which are more than 90 percent Negro are being bused to predominantly white schools. The remainder are being transported to schools that are more than 50 percent Negro. Practically all students bused from overcrowded majority-white schools are assigned to majority-white schools.[114]

Alterations In Attendance Areas

Among the measures which large cities have used or have contemplated using to reduce racial imbalance are devices which involve changes in attendance areas. Such devices include strategic selection of school sites (which involves the establishment of new attendance areas and concomitant changes in old attendance areas), boundary changes, and school pairing.

Site Selection.—The strategic use of site selection as a device to relieve racial imbalance has been mentioned by some school boards, such as those in San Francisco and Philadelphia, in policy statements.[115] In Rochester, school authorities are planning to locate a new junior high school to assure that it will open racially balanced.[116] Some educators, discussing school desegregation in large cities, have suggested that this approach has limitations. The construction of a small school on the periphery of a Negro ghetto may not guarantee stable desegregation, for it is these very areas which frequently experience rapid racial turnover. At the Commission's Cleveland hearing, Paul Briggs, Cleveland's Superintendent of Schools testified that the changing nature of residential patterns in that city made it virtually impossible to achieve school desegregation by this means, even at the high school level:

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[112] See, for example, San Francisco Unified School District, *Memorandum From Assistant Superintendent Lewis Allbee to Superintendent Harold Spears* at 2 (Oct. 15, 1965). "Since schools in the western sections of the city, serving upper socioeconomic classes, enjoy high prestige, it is likely that these schools would draw pupils of high academic and social aspirations from other parts of the city. This would drain student leadership and academically-talented pupils from the schools that can least afford to lose them."

[113] Staff telephone interview with Dr. Kleiner, director, Model School Division, Portland Unified School District (Nov. 22, 1966). Enrollment data for 1965 obtained from Portland Unified School District.

[114] Data on Philadelphia's busing program were supplied to the Commission by the Department of Research, Board of Education, School District of Philadelphia. Enrollment data are for 1965–66. See also: School District of Philadelphia, *Progress Report on Integration in the Philadelphia Public Schools,* 1, 3 (March 1966).

> When Kennedy Senior High School was first envisioned, if that high school had opened that day in that location, it would have been 60 percent white and 40 percent Negro. When it opened it was 95 percent Negro.[117]

Boundary Changes.—As a means of eliminating racial imbalance, the adjustment of attendance area boundaries in large school systems essentially has the same limitations as strategic site selection. Only at the periphery of Negro and white areas would boundary adjustments affect a school's racial composition. The small elementary school attendance areas make it unlikely that redistricting can result in lasting desegregation. In New York City, for example, to promote desegregation about 100 boundary changes were made between 1959 and 1963. The Advisory Committee to the State Commissioner of Education pointed out that, despite these changes, the extent of segregation in the city's schools was greater in 1963 than in 1958.[118]

In Chicago, a study of the schools concluded: "Even if the most extreme procedures of redistricting school attendance areas to increase desegregation were to be used, there would still be all-Negro and all-white schools in the city." [119] A study of school redistricting in Boston, which has a relatively small Negro residential area, estimated that the most comprehensive redistricting in that city would reduce the percentage of nonwhite children in majority-Negro elementary schools from 78 to 65.[120]

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[115] See San Francisco Unified School District, *Report of the Ad Hoc Committee of the Board of Education To Study Ethnic Factors in the San Francisco Public Schools* (April 1963); Board of Public Education, Philadelphia, Pa., *Report of the Special Committee on Nondiscrimination,* 72 (July 23, 1964).

[116] Staff telephone interview with Dr. William Rock, Administrative director for planning and research, Rochester Public Schools (Nov. 18, 1966).

[117] *Cleveland Hearing,* 380.

[118] The State Education Commissioner's Advisory Committee on Human Relations and Community Tensions, *Desegregating the Public Schools of New York City,* 4–5 (May 12, 1964). [Hereinafter cited as *Allen Report.*]

[119] The Advisory Panel on Integration of the Public Schools, *Report to the Board of Education, City of Chicago,* 62 (Mar. 31, 1964).

[120] Technical Assistance Team of the Joint Center for Urban Studies, *Changes in School Attendance Districts as a Means of Alleviating Racial Imbalance in the Boston Public Schools,* 2, 5 (May 27, 1966). [Memorandum to the Task Force on Racial Imbalance of the Massachusetts Commissioner of Education.]

The study did not consider redistricting to be a permanent solution.[121]

School Pairing.—School pairing involving schools located close to each other and with contiguous attendance zones has enabled some smaller communities to desegregate entire grade divisions of their school systems. In big cities the potential effectiveness of this device is more limited. Desegregation can be achieved by such pairing only when the schools involved are located at or near the border of Negro and white neighborhoods. Large cities have more schools which are located at or near the centers of white and Negro concentrations.

In New York City, the Board of Education in 1964 proposed 21 pairings involving 42 schools. The proposal, however, would have had little impact. Commissioner Allen's Advisory Committee observed:

> If all 21 of the pairings proposed by the board were to be introduced at once . . . school segregation [would have been reduced] by 1 percent. . . .[122]

Metropolitan Desegregation

In a few large cities efforts have been made to place Negro youngsters from majority-Negro central city schools in neighboring suburban school systems. Programs of this kind are operating in the Rochester, N.Y., Boston, Mass., and Hartford, Conn., metropolitan areas.

Rochester.—In March 1965, the school board in West Irondequoit, a Rochester suburb, agreed to accept 25 first graders from racially imbalanced Rochester schools.[123] Apart from the transported students, West Irondequoit had four Negro students in an enrollment of approximately 5,800.[124]

The students selected to participate were from a predominantly Negro school located in a middle-class Negro area. The Rochester school administration felt that these children would have the best chance to succeed. The staff screened 58 incoming first-grade children in order to choose those who were average and above average. Parental consent was obtained.[125] Each year approximately 25 more children from central city Rochester schools will enter the first grade in West Irondequoit, until the number of inner-city children reaches 300. Under the plan, no more than four and no less than two Negro children are assigned to the same classroom. Rochester pays the tuition and provides the transportation for the children participating in the program. Most of the tuition and transportation costs are reimbursed by the State and by Federal funds under Title I of the Elementary and Secondary Education Act.[126]

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[121] *Ibid.*

[122] *Allen Report,* 8.

[123] *USCCR Staff Report, Rochester and Syracuse,* 29.

[124] *Ibid.*

[125] *Ibid.*

[126] *Id.* at 29–30.

At the Commission's Rochester hearing, William C. Rock, Administrative Director of Planning and Research for the Rochester school system, reported on an evaluation of the program conducted by the Rochester and West Irondequoit school systems. Among the conclusions reached in the study was that "the program is working well and that children at this time are benefiting from the experience." [127] When the achievement of the transferred students and a matched group of students in the sending school was compared, it was found that children in the group going to West Irondequoit were reading consistently at grade level, while the children in the matched control group at the sending school were not reading consistently up to grade level.[128]

All of the children involved in the first year of the West Irondequoit program returned during the 1966–67 school year.[129] Two parents of Negro children participating in the program testified at the Commission hearing in Rochester that their children had had normal school experiences and had adjusted well to school.[130]

Boston.—The population of the Boston Metropolitan Area in 1960 was more than 2.5 million. About 3 percent were Negroes who were concentrated primarily within the city of Boston.[131] In September 1966, an organization known at METCO (Metropolitan Council for Educational Opportunities)—a group of private citizens from Boston and surrounding suburban communities who are concerned with educational problems in the metropolitan area—began a program under which 220 children are bused from the predominantly Negro Roxbury-North Dorchester and South End areas of the city to public schools in seven suburban communities.[132] The students selected came from different social class backgrounds and spanned a range of ability. Student participation in METCO is voluntary and the communities taking part have committed themselves to educate the participating children until their graduation from high school.[133]

The METCO program, funded by a private foundation and the U.S. Office of Education under Title III of the Elementary and Secondary

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[127] City School District, Rochester, N.Y., *An Interim Report on a Cooperative Program Between a City School District and a Suburban School District,* 16 (July 20, 1966).

[128] *Id.* at 4.

[129] Testimony of Erle Helmer, Superintendent of West Irondequoit, *Rochester Hearing,* 237.

[130] *Id.* at 262–265.

[131] U.S. Bureau of Census, *Census of Population and Housing:* 1960, PHC(1)–18, table P–1, at 14.

[132] *Boston Hearing,* 291–92, 295.

[133] *Id.* at 296.

Education Act,[134] also is eligible for State assistance under a recently passed law.[135]

METCO leaders hope to expand the busing program next year to include more students and additional communities. Plans to involve 300 additional Boston children in the 1967–68 school year have been announced.[136] Three additional suburban communities have committed themselves informally to participate in METCO next year and 22 other suburban communities have indicated some interest.[137]

Hartford.—Of the more than 500,000 persons who live in the Hartford, Conn., Metropolitan Area, nearly 30,000 are Negroes, 25,000 of whom live in the city of Hartford.[138] Since September 1966, 267 Negro elementary school children have been bused from predominantly Negro schools in Hartford to 33 schools in 5 surrounding suburban communities. The program, "Project Concern," is supported by Federal and private foundation funds, and by money from the State and from the city of Hartford. The children from the inner-city schools were chosen at random and no child was excluded because of his ability or achievement level. Less than 5 percent of the children selected declined to participate. The final bused group was 88 percent Negro, 10 percent Puerto Rican, and 2 percent white. The 267 children were assigned to the suburban schools on a vacant seat basis, but with a limit of three Hartford students to a class.[139]

Each child has been placed in the grade he would have attended in the city schools. A supportive team consisting of a teacher and a nonprofessional teacher's aide has been provided for every 25 city children. These teams work with the regular classroom teachers and are concerned primarily with remedial educational activities, to be carried on in small racially mixed groups, and with home-school liaison.[140]

These metropolitan programs affect very small numbers of Negro children and they do not reduce racial isolation in city schools. In spite of their current limitations, however, they show promise. Plans extending beyond central city limits and involving the wider metropolitan area have potential for affecting greater numbers of students and schools than plans confined to the cities alone. This, obviously, is true of cities which have majority-Negro student enrollments.

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[134] *USCCR Staff Report, Boston,* at 31.
[135] *Ibid.*
[136] *Id.* at 32.
[137] *Ibid.*
[138] U.S. Bureau of Census, *Census of Population and Housing: 1960,* PHC (1)–61, table P–1, at 14.
[139] Connecticut State Department of Education, *Project Concern* (Sept. 20, 1966).
[140] *Ibid.*

Progress in reducing racial isolation in city schools has not been extensive. In a number of smaller communities, efforts to eliminate school segregation have been successful. A variety of techniques has been used, mainly involving the enlargement of school attendance areas to overcome residential segregation.

In the Nation's large urban centers, comparatively little progress has been made. Larger areas of racial concentration and rapid racial turnover in peripheral areas have made it difficult for big city school systems to reduce racial imbalance. Techniques that may produce total desegregation in small communities appear to provide few lasting solutions in large cities. In many large cities, school desegregation cannot be achieved without substantial revision of school assignment policies.

In some cities, Negro students already constitute a majority of the public school enrollment. In these cities, solutions not involving suburban participation no longer are possible. John Fischer, reviewing the progress of school desegregation in big cities, has written:

> Twelve years of effort, some ingeniously *pro forma* and some laboriously genuine, have proved that desegregating schools . . . is much more difficult than it first appeared. Attendance area boundaries have been redrawn; new schools have been built in border areas; parents have been permitted, even encouraged, to choose more desirable schools for their children; pupils from crowded slum schools have been bused to outlying schools; "Negro" and "white" schools have been paired and their student bodies merged; but in few cases have the results been wholly satisfactory. Despite some initial success and a few stable solutions, the consequences, for the most part, have proved disappointing. Steady increases in urban Negro population, continuing shifts in the racial character of neighborhoods . . . produce new problems faster than old ones could be solved.[141]

In a few large cities, metropolitan programs are emerging. Small in number and impact, they nevertheless are promising first steps.

Factors in Successful School Desegregation

Whether school desegregation is effective depends on a number of factors. These include the leadership given by State and local officials; the application of the plan to all schools in the community; the measures taken to minimize the possibility of racial friction in the newly desegregated schools; the maintenance or improvement of educational standards; the desegregation of classes within the schools as well as the schools themselves, and the availability of supportive services for individual students who lag in achievement.

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[141] *App.* D-2.1 at 253–254.

State and Local Leadership

Leadership by State and local officials is an important factor in successful school desegregation.

The Connecticut State Department of Education was primarily responsible for initiating the Hartford program involving the busing of inner-city children to surrounding suburbs.[142] State leadership also was crucial in initiating school desegregation in Springfield, Mass.[143] Support by the New Jersey Commissioner of Education, along with the determination of local officials, was a significant factor in reducing racial imbalance in the Englewood schools.[144]

At the Commission's Rochester hearing, James Allen, the New York State Commissioner of Education, stressed the importance of local leadership in making school desegregation work:

> The leadership of the school authorities, the leadership of the school superintendent—is a tremendous factor here. His attitude, his courage and the attitude and courage of the school board can do a great deal to help work this out in a peaceful and harmonious fashion . . . where the community attacks this problem as a comprehensive one . . . and gets ahead of it there is more success.[145]

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[142] Staff interview with Dr. Alexander J. Plante, State director of the Office of Program Development; Mrs. Trude Johnson, assistant director of Project Concern; Thomas Mahan, director of Project Concern; John McManama, elementary school principal, Farmington, Conn.; Mrs. Conners, teacher, Farmington, Conn.; Edward Sullivan, principal of Union School, Farmington, Conn. (Sept. 27, 1966). State officials conceived and implemented the busing program. The State provided a grant of $20,000.

[143] The Springfield School Committee had taken little concrete action to end school segregation until it became apparent that the State Board of Education would require action. In April 1965, the State Board's Advisory Committee on Racial Imbalance and Education issued a report recommending State legislation requiring school districts to take steps toward eliminating racial imbalance. (*Because It Is Right,* 20.) In August 1965, State legislation was passed providing that if racial imbalance was found, school systems would be required to submit a desegregation plan. The legislation also provided that if a district refused to do so, the State could defer school aid funds. Massachusetts Acts 1965, ch. 61.

In June 1965, before enactment of the State legislation, the then superintendent of schools, Joseph McCook, commented: "Because the State, the Governor, and the Commissioner have taken so strong a stand, the administration believes that significant steps can and should be taken now to implement a Springfield plan [to eliminate racial isolation]." *Springfield School Committee Minutes* (June 3, 1965).

A limited open enrollment program began operating in September 1965. After 6 months of negotiation, a new Springfield plan for reducing racial isolation was accepted by the State. Staff interview with Dr. Helen Thienert, director, Department of Research, Springfield Public Schools, Sept. 16, 1966; Springfield Public Schools, *Revised Springfield Plan for the Promotion of Racial Balance and the Correction of Existing Racial Imbalance in the Public Schools* (Apr. 1, 1966).

[144] In Englewood, N.J., the superintendent and the board committed themselves to a desegregation plan, but were opposed by elected city officials. The State Commissioner of Education ruled that Englewood must desegregate. The board then created the central sixth-grade school for all students, and in 1966 created an additional central grade school. (See *Stout Study,* VIII–26, 42, 63.)

[145] *Rochester Hearing,* 407–08.

Samuel McDonald, the Coatesville, Pa., School Superintendent, has stated his view of the school system's responsibility:

> We felt it was our job to make a decision, inform our citizens of our decision, and then stick to it. And it's just exactly what we did.[146]

Involvement of All Schools in the Community

Another important factor in successful school desegregation is the involvement of all schools in the community. Where desegregation affects only part of the community, the affected parents may feel resentful at being required to contribute to the solution of a problem which other parts of the community remain free to ignore.

In some of the cities discussed above, early plans involved only a small proportion of the schools and affected only isolated segments of the community. As a result, substantial opposition was generated among the white and Negro parents upon whom the entire burden of desegregation descended. Opposition diminished when the plans were made more inclusive. In Berkeley, Calif., for example, an early proposal to adjust the attendance area boundaries of the predominantly white and the predominantly Negro junior high schools aroused opposition, principally from a group called Parents for Neighborhood Schools. Opposition decreased when the plan for the creation of a central ninth grade school, affecting all junior high school students, was proposed.[147]

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[146] "Coatesville, Pa." *School Management* at 94 (March 1964). Strong local leadership also was instrumental in achieving school integration in Evanston, Ill., and White Plains, N.Y. In September 1966, the initial phase of the Evanston, Ill., program to end school segregation began. Wakefield, *The Computer Helps Desegregate Schools*, 5 (undated). Despite community opposition, Superintendent Coffin and the board stood firm and on Nov. 21, 1966, the board voted unanimously in favor of full desegregation. Chicago Tribune, Sept. 11, 1966, sec. 1, p. 10; Chicago Sun Times, Nov. 22, 1966, p. 1. In White Plains, the superintendent and board, with help from the State, devised a desegregation plan. Despite considerable community opposition, the board and superintendent stood firm behind their plan. *Stout Study*, I–6–9. Leadership by the Superintendent and Board in West Irondequoit, New York was in large measure responsible for the adoption and implementation of the program to accept Negro students from the city of Rochester. Anticipating opposition to the proposal, the school administration gained the support of teachers and parents' groups before publicizing the program. Despite charges that the Board had acted illegally and threats of a referendum, the Board stood by its policy. After a year of the program, the Superintendent reported that community anxiety had relaxed considerably. *Rochester Hearing*, 232–34.

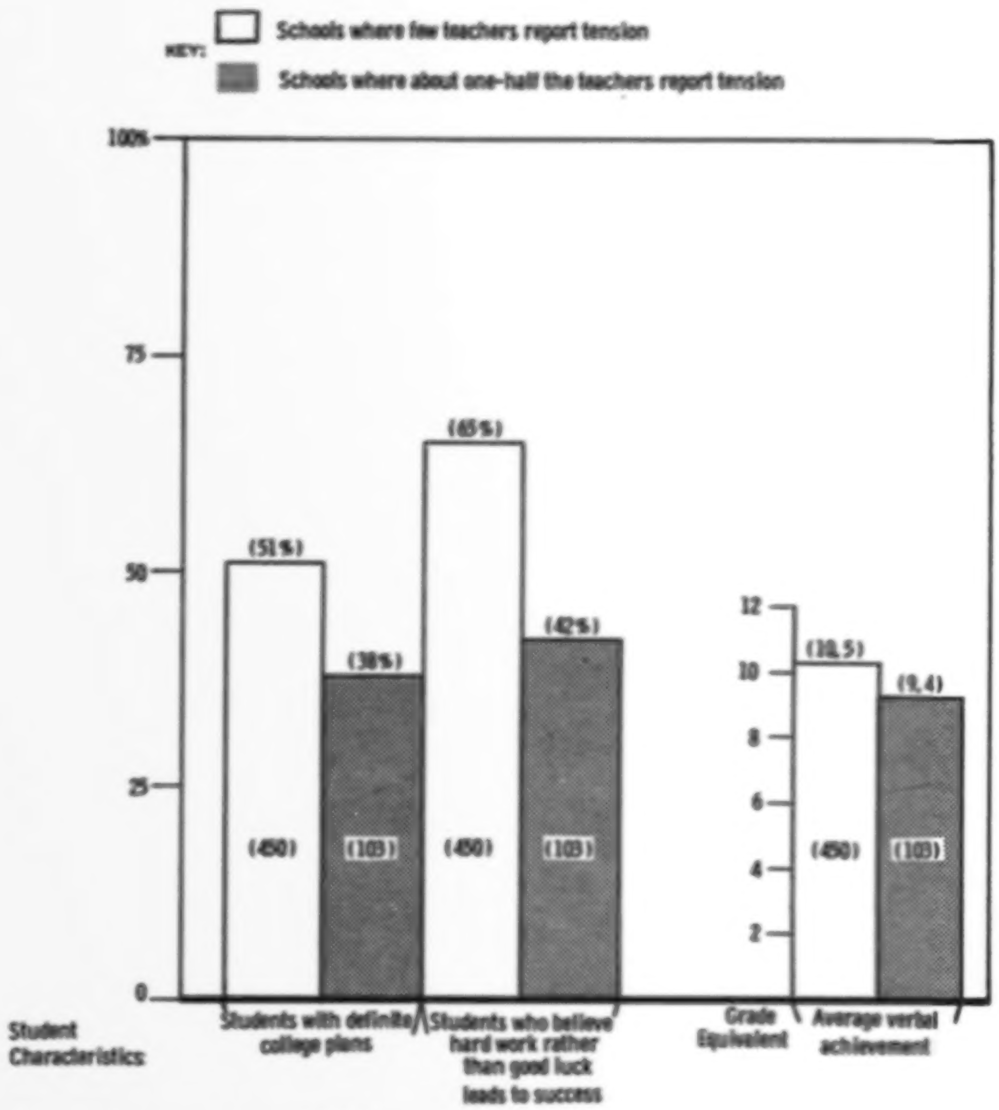
[147] *Stout Study*, VII–87. In addition to Berkeley, Englewood, N.J., and White Plains, N.Y., took steps to assure system-wide involvement when desegregation occurred. For example, the creation of the central school in Englewood, N.J., for all sixth graders, and later for all fifth graders, means that all children in those grades attend the central school. The other elementary schools were affected because Negro students from the one remaining racially isolated elementary school were assigned to schools throughout the system. (*Stout Study*, VIII–63.) In White Plains, N.Y., desegregation has extended to all grade divisions within the system, and the school board has ruled that all schools will have a minimum Negro enrollment of 10 percent, but that in no school will Negro enrollment exceed 30 percent. (*Stout Study*, I–4; 11–12.)

Minimizing the Possibility of Interracial Friction

The success of school desegregation also depends on the degree to which administrators and teachers are able to create conditions under which Negro and white students who are brought together in the school and the classroom are able to understand and accept each other.

Interracial friction in a nominally desegrated school can cause hardships for particular pupils and adversely affect student attitudes and achievement. In the Office of Education survey, teachers were asked to report on the extent of friction between racial groups in their schools. Figure 6 shows a clear relationship between student attitudes and achieve-

Figure 6: Effects of tension on attitudes and performance of 9th grade Negro students in desegregated schools



Source: USCCR analysis of *OE Survey* data. See App. C1.

ment and the degree of such friction. The achievement of Negro students is adversely affected where there is a high degree of friction.[148]

Thus, the survey, commenting on the successful desegregation of a previously all-white "prestige" junior high school in Berkeley, Calif., stated:

> The Garfield experience to date supports forcefully at least one conclusion: successful integration requires much more than redistricting, much more than feeding Negroes and whites into the same school. Great efforts must be made to anticipate frictions, provide flexible and motivated staff, and prepare all students for the new experience to come.[149]

School systems which have desegregated their schools have recognized the importance of maintaining a positive interracial climate. When middle class white students entered West Campus Junior High School in Berkeley, formerly a predominantly Negro school, they were met by a teaching staff which included white and Negro teachers who were well trained and highly motivated to make desegregation work. The staff held orientation sessions with white and Negro student leaders prior to the opening of school, sponsored numerous clubs and other extracurricular activities open to students of both races, and accepted responsibility for firm and consistent discipline throughout the school.[150]

In some cities it was felt that adding Negro teachers to the faculties of previously white schools might facilitate interracial student association.[151] In New York City, the school system, electing to bus Negro children to a majority-white school, arranged to have white parents and teachers welcome Negro parents and children to the school; white and Negro parents attended parents' meetings in both Negro and white neighborhoods.[152] Berkeley has "student-teacher concern" boards, which receive student grievances, discuss the situation, and make recommendations to the principal.[153] These boards operate as safety valve devices.

In some cities the task of reducing tensions was looked upon as a community-wide responsibility. In Kansas City, Mo., a group of women formed a special council through which parents, ministers, and representatives of various community groups discussed with school officials the problems involved in helping students adjust from segregated grade schools to desegregated high schools.[154]

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[148] See *app. C–1,* Tables 6.1, 6.2. Whites also are adversely affected. 8.12.

[149] *OE Survey,* 477.

[150] *Id.* at 477–478.

[151] Under Philadelphia's volunteer teacher transfer program, for example, 15 schools with all-white faculties received Negro transfer teachers in the 1965–66 school year. School district of Philadelphia, *Progress Report on Integration in the Philadelphia Public Schools,* [3 March 1966]. The purpose of the program is to provide that "students of today, who will be the leaders of tomorrow, have opportunity to know and work with competent, experienced, understanding teachers of different racial and ethnic backgrounds." *Report of the Special Committee on Nondiscrimination of the Board of Public Education of Philadelphia, Pa.,* 177 (July 23, 1964).

[152] U.S. Commission on Civil Rights, *Teachers Conference,* 19–20 (Oct. 18, 1966, original transcript of proceedings [Hereinafter cited as *Teachers Conference*]).

[153] *Id.* at 11.

Another contribution to interracial understanding has been the introduction of multiracial curriculum materials. Integrated teaching materials often are used in newly desegregated schools. For example, in Syracuse, an integrated basic reader is used in all elementary schools. In addition, the history of Negro Americans has been incorporated into the regular curriculum for the 1966–67 school year at all grade levels.[155] The Berkeley schools have published a book based on the experiences of minority children participating in an all-day field trip.[156] In other school systems teachers developed their own biracial materials when the school system did not provide such materials or where, though provided by the system, the materials were judged inadequate.[157]

Maintenance of Educational Standards

Educators and parents have pointed out that school desegregation can be of benefit not only to Negro children but to white children as well. As William Rock put it at the Commission's Rochester hearing, "Hopefully when these [desegregated white] children are adults, they will not be among those who tell us that they do not like Negroes and that they do not want their children to talk with or associate with Negro children." [158] A Negro parent at the same hearing pointed out that "It is . . . fine for a . . . non-prejudiced white parent to say to their child, 'Negro children are just as good as you are' . . . [but] I would imagine they are thinking, 'well, where are they? How come they don't live next door to us? How come they don't attend schools with us?' " [159]

There are important educational values inherent in the development of a realistic, unprejudiced view of the world in which one lives and works. Such a view requires the ability to relate realistically and without distortion to human beings who constitute a substantial segment of one's own society. A Negro parent at the Rochester hearing said, "Education in my opinion is preparing yourself to live and work in the world, and in this respect your education is definitely lacking if you are not being prepared to live and work with all types of people." [160]

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[154] *Ibid.*

[155] *Stout Study*, V–60.

[156] Berkeley Unified School District, *On the Go—Boys and Girls Exploring the San Francisco Bay Area* (1966). Photographs taken on the trip were posted and the children's responses to them constitute the core of the book's text.

[157] *Stout Study*, II–33. Teachers in Greenburgh No. 8 made their own social studies textbooks, using old copies of *Ebony* magazine to supplement the regular textbooks.

[158] *Rochester Hearing* at 208.

[159] *Id.* at 266–267.

[160] *Id.* at 267.

Earle Helmer, Superintendent of Schools in West Irondequoit, N.Y., asked at the Rochester hearing whether the white children in the school benefited from the busing program, replied:

> . . . [I]f we look at the reports that are available from outstanding educational leaders . . . there could be little doubt about it that this is not only educationally sound for the youngsters coming into the district, but it is educationally sound and enriching for the youngsters who are already in the district . . . [and] these youngsters are having some experience because of the interaction with inner-city children that they would be denied otherwise.[161]

Some parents and educators concede these potential benefits but are concerned that school desegregation may impair the academic achievement of white students.

In the preceding chapter it was shown that differences in the social class level of schools can affect the achievement of both Negro and white students. Table 2—based on further analysis of the survey data—shows that the achievement of white students in classes which are roughly half or more than half white is no different from that of similarly situated students in all-white classes.[162]

Administrators in school systems which have desegregated their schools report that there is no evidence that white students have suffered academically. In White Plains, N.Y., for example, although some white parents feared that desegregation would cause their children to fall

TABLE 2.—*Performance of 12th-grade white students in all- and majority-white classrooms*

Individual's parents' education	School average: Parents' education	Proportion white classmates last year	
		More than half I	All II
Less than high school graduate (low).	Less than high school graduate (low).	10.3	10.1
	High school graduate or more (high).	11.3	11.4
High school graduate (medium).	Less than high school graduate (low).	11.1	10.9
	High school graduate or more (high).	12.2	12.2
At least some college (high).	Less than high school graduate (low).	12.3	12.1
	High school graduate or more (high).	12.8	12.9

SOURCE: USCCR analysis of *OE Survey* data. See *App. C1*.

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[161] *Id.* at 239–240.
[162] See *app. C–1*, tables 8.0–8.12 at 134–42.

behind academically, the superintendent reported that the continued progress of the children soon allayed their fears.[163]

Many educators nevertheless stress the need to combine school desegregation with improvements in the quality of education for all students. Neil Sullivan, the Berkeley Superintendent, has written:

> Desegregation must be combined with a general program of educational improvement . . . [large] segments of our communities, unconvinced of the educational necessity for integration, must be shown that the new program is in the best interests of all children.[164]

Several school systems have accompanied school desegregation measures with steps to improve educational standards in the desegregated schools. In desegregating its three junior high schools, Berkeley reduced the pupil-teacher ratio in all three schools: the lowest ratio was established in what was formerly the only predominantly Negro school.[165]

In a number of other communities apprehension about the possible lowering of educational standards was the central point of opposition to school desegregation. To meet such fears school districts sometimes have established desegregated schools as demonstration or experimental schools. In Xenia, Ohio, for example, an all-Negro elementary school was closed in 1964 and converted into a demonstration school. The school is supported by a $250,000 grant which enables it to employ new educational techniques. A cross-section of children in the community attend the school. Asked if the plan might fail because of the fears of white parents concerning the quality of the school, the school superintendent replied:

> Not at all. . . . Remember everyone attending this school wants to be here. It's the city's prestige school. Kind of a status symbol.[166]

Avoidance of Racial Isolation Within the Desegregated School

Although the academic achievement of Negro students is likely to increase when they attend racially desegregated schools, such desegregation does not usually entirely eliminate the achievement gap, particularly for disadvantaged children.[167] The explanation may lie in the residual effects of previous experience in racially isolated schools, the effects of poverty, or both.

If, in a newly desegregated school, children attending the same grade are grouped in separate classrooms on the basis of their achievement level, the result may be the establishment of racially isolated classrooms within the nominally desegregated school. Data from Commission studies show that many Negro students who attend majority-white schools in fact are in majority-Negro classrooms. These students generally perform at the same levels as Negro students in majority-Negro schools.[168]

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[163] Staff telephone interview with Supt. Carroll Johnson, Jan. 4, 1967.

[164] *App. D–2–5* at 287.

[165] *Stout Study,* VII–112.

[166] *School Management,* at 92–93 (October 1966).

[167] See, for example, *App. C–1,* Table 4.4, at 70–71.

Some school systems have devised measures to meet this problem. In White Plains, N.Y., for example, students are grouped pursuant to a policy of planned heterogeneity. Each class has a wide range of ability levels as well as a balance of races, sexes, and social class.[169]

Remedial Assistance

The foregoing discussion is not intended to assess the value of ability grouping *per se*. While it is possible in some cases, by avoiding rigid ability grouping, to forestall racial isolation within the nominally desegregated school, the root of the problem is continued academic disadvantage. Several school systems have instituted remedial services designed to meet this problem.

Many Negro children attending desegregated schools are able to compete successfully without special help.[170] However, in desegregated schools with disadvantaged Negro pupils, it often has been found that supportive services are needed. Such services include tutoring programs, reduced class size, increased teaching staff, and teachers' aides.[171] All of these measures enable teachers to devote more time to the needs of individual children.[172] In addition, efforts also have been made to improve the sensitivity of teachers to the learning problems of Negro children through in-service training.[173]

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[168] *Stout Study,* VIII–54–55; VII–173 *Supra.* For performance levels see App. C–1, Tables 5.1, 5.2, and 5.3, at 86–88.

[169] The assignment of pupils to classrooms follows the principle known as the "good working group" policy. (*Stout Study,* I–18–19.) White Plains Superintendent Carroll Johnson has said that the "good working group" policy includes a racial balance in most classes. Staff telephone interview with Superintendent Carroll Johnson, Jan. 4, 1967.

[170] Dr. Charles Brown, superintendent of the Newton, Mass., public schools, testified that it was not necessary to provide additional services for the Negro children bused in from Boston: "These youngsters may or may not have . . . educational problems. The teachers reported to us that they represent much of the same spread of problems that they have faced in the past and any attention they receive as individuals will be a reflection of the total range of specialized programs that we have [and] which we are going to add to in the future . . . to improve the total school system." *Boston Hearing* at 364.

[171] The Teaneck school system developed a new program in 1965 to identify individual reading problems. *Stout Study,* VI–35; the Tutorial and One-For-One Programs developed in Englewood provide help and attempt to stimulate motivation. *Supra* VIII–67, 77–78; supportive services in Berkeley schools include teacher aides; remedial reading programs and reduction of class size in English in lower tracks in secondary schools. *Supra* VII–133, 140; 152.

[172] White Plains Public Schools, *Project Able 1961–66* at 4 (July 15, 1966). One of the stated goals of White Plains' Project Able is to provide individualized instruction through the use of volunteers. See also: Greenburgh School District No. 8, *Project Able, Summary and Evaluation of 5-Year Program* at 21–22 (July 1, 1966).

Such programs operate in a number of cities studied by the Commission, including Berkeley, Englewood, Teaneck, Syracuse, White Plains, and Greenburgh No. 8. Administrators in these cities believe that such programs will prove successful. The programs, however, are a recent phenomenon, and evaluations are not complete. In Greenburgh No. 8, where the program has been in progress for four years, recent results suggest that the combination of remedial assistance and desegregation will improve student achievement.[174]

Plans and Proposals

In small communities, school desegregation plans creating schools designed to serve a broad spectrum of the community have been implemented. The plans are regarded by educators in these communities as educationally beneficial, and they have met with community acceptance. In large cities, the problems involved in establishing desegregated schools to serve a wider community are more complex. Nevertheless, plans and proposals for schools of this kind have been developed.

The proposals have two basic features in common. They would broaden school attendance areas to assure a more heterogeneous school population, and they would improve substantially the quality of education. Those proposals which are discussed here fall into three categories: supplementary centers and magnet schools, education complexes, and education parks.

Supplementary Centers and Magnet Schools

Proposals for supplementary centers and magnet schools would establish specialized school programs either in existing schools or in new facilities. Students from all or many parts of the city would attend, usually on a part-time basis. By providing education of better quality and by drawing students from a large area, the proponents hope to stem the movement of white families to suburbs and to maintain such centers as institutions desegregated by race and social class.[175]

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[173] See, for example, *Greenburgh Evaluation, supra* note 172, at 1, 2. See also *Stout Study,* at VII–161; VIII–80; VI–36.

[174] The Greenburgh evaluation found that the third experimental group showed greater gains at the end of first grade, after 2 years of the program, than the two previous experimental groups as well as the controls. The first group had been largely Negro. The third included more white children. It was felt that the aspirations and attitudes of teachers, children, and parents had improved. The evaluation did not attempt to assess which single factor contributed most to greater achievement. *Greenburgh Evaluation, op. cit. supra* note 172 at 1–3, 7, 20–23. The White Plains evaluation found: "A review of the scores shows that some individual children in both Able and Control Groups have made tremendous gains. . . . Others have shown a marked loss." The evaluation then goes on to say: "At this point it cannot be claimed that Project Able has had a marked effect on achievement. . . . Too little time has elapsed to know what the effect may ultimately be." *White Plains Evaluation, op. cit. supra* note 172 at 34.

Supplementary Centers

Plans for supplementary centers would provide a portion of a child's education at the center. Depending on the plan, a child might spend as much time as two days a week or as little time as a few days each year at this institution.

In 1965 Mount Vernon, N.Y., developed plans for a "Children's Academy." [176] The facility would be designed to reduce racial imbalance and, by improving the quality of education, retain middle-class students in the schools.[177] Six thousand to 6,500 children in the elementary grades would spend 40 percent of their time at the academy.[178] The course work would be so organized that children would attend classes without regard to age or grade level and would be grouped on the basis of interest, need, and ability.[179] The program would supplement the basic academic skills taught in the neighborhood schools.[180] Economies of time made possible by the central facilities would enable the classwork to be handled by subject specialists to a greater extent than at present.[181]

Cleveland, Ohio, recently began operating a supplementary center.[182] The center provides special educational programs for the 14,000 sixth-grade students in the city's public and parochial schools. Each day about 300 children attend. They are selected so that the student body in the center is racially integrated.[183]

Each class remains intact with its teacher, but is combined with other classes for various activities. The areas of study include local history, science, and the space age; each day ends with a concert attended by all children. It is estimated that each sixth-grade student will attend about four times a year. Under present plans, this center will serve as a prototype for a larger facility serving many more children and offering greater program diversity.[184]

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[175] Board of Education, Mount Vernon, N.Y., *A New Concept in School Organization: The Children's Academy* at 22–23 (undated brochure). "If to keep families in the city will require schools to be superior to those in the suburbs, then Mount Vernon has an answer: The Children's Academy in the City." See also National Conference on Education of the Disadvantaged, *Special Session, Innovative Projects for Increasing Quality Education and Promoting Integration* at 9. "As a result [of Portland's model school program], it is anticipated that the trend of middle-class white out-migration . . . will be halted . . . ."

[176] Board of Education, Mount Vernon, N.Y., *op. cit. supra* note 175 at 4.

[177] *Id.* at 4, 5, 22, 23.

[178] Interview with Dr. Alfred Fronko, director of community-school relations, Mount Vernon Public Schools, Oct. 17, 1966.

[179] Board of Education, Mount Vernon, N.Y., *op. cit. supra* note 175 at 9, 14.

[180] *Id.* at 14.

[181] *Id.* at 12.

[182] Interview with Donald Quick, director of Supplementary Education Center, Cleveland Public Schools (October 1966).

[183] *Ibid.*

Magnet Schools

Magnet schools which offer specialized courses designed to attract white as well as Negro students constitute a variation of the specialized high schools found in many of the Nation's cities, such as Bronx Science in New York and Boston Latin in Boston.

Philadelphia has begun a program providing for magnet schools,[185] financed in part with Federal funds. When fully implemented, three senior high schools will have special academic programs. Each school will have one area of specialization: commerce and business, space and aeronautical science, or government and human service.[186]

In addition, two desegregated middle schools serving grades 5 through 8 have been proposed; each will stress individualized instruction, innovations in teaching, and the flexible grouping of students. Four elementary schools will have intensive programs in reading and science, again stressing individual attention for students.[187] School officials view the middle and elementary magnet schools as a means of retaining a racial balance in the student population by providing superior education.[188]

Los Angeles, Calif., plans to convert three senior high schools and four junior high schools into magnet schools.[189] The schools are located relatively near each other in an area of racial transition. One special center will be installed in each school, offering intensive instruction in one or more advanced curriculum areas, such as data processing, foreign languages, and advanced mathematics. Enrollment will be voluntary. A student who elects to participate in the program will attend his neighborhood school for part of the school day and be transported to the magnet center for his special course work. While the magnet schools initially will serve only students living in the attendance areas of the magnet schools, school officials have indicated that after the program is in operation children from elsewhere in the city will be encouraged to take special courses at the magnet schools.[190]

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[184] *Ibid.;* Cleveland Public Schools, Cleveland, Ohio, *Supplementary Educational Center* (undated brochure). The prototype will serve as a center for approximately 2 years. A permanent center will be designed during the prototype operation to accommodate thousands of students daily in the downtown area.

[185] The program began in September 1966 at 3 elementary, 2 middle and 3 high schools. (New York Times, 34, January 11, 1967.) For a description of the Planning Project and the use of Federal funds, see U.S. Office of Education, *Pacesetters in Education: Descriptions of First Projects Approved Title III, Elementary and Secondary Education Act of 1965* at 85 (February 1966).

[186] Interview with David Horowitz, Associate Superintendent in charge of planning, Philadelphia Public Schools, Oct. 17, 1966.

[187] *Ibid.*

[188] "The Board of Education Reports on Schools for a Greater Philadelphia," Supplement of The Philadelphia Inquirer, 5–6 (Apr. 3, 1966).

[189] U.S. Office of Education, *Projects Approved Under Title III Elementary and Secondary Education Act: September 1, 1966 Deadline,* 2 (Nov. 14, 1966).

While supplementary centers and magnet schools provide advantages over traditional school arrangements in achieving a degree of school desegregation, each device has limitations. Supplementary centers draw students only on an intermittent basis and often may not afford a substantial and extended experience in a desegregated setting. Magnet schools depend upon student choice and are limited by available space. In both cases, the regular schools in the system remain relatively unaffected.

Education Complexes

Proposals for education complexes would broaden attendance areas by grouping existing schools and consolidating their attendance zones. The clusters might then draw a more racially and socially heterogeneous student body. Specialized teachers and facilities could be made available to more students.

The only fully developed proposal for a system of education complexes known is a comprehensive plan for the New York City public schools designed by the Center for Urban Education in New York at the request of the State Commissioner of Education.[191] This proposal would create complexes for the entire city. Each would serve almost 6,000 students, about two-thirds in the lower and middle elementary school grades, and the remainder in the upper elementary and junior high school grades.[192]

Each complex would consist of two to eight elementary schools, all feeding one to three middle or junior high schools. Complexes might be arranged so that all elementary schools would be within approximately 20 minutes by bus from each other.[193] As in the magnet schools and supplementary centers, dividends in educational quality would arise from the more specialized services which the complexes would be able to offer students. The proposal stated, "The complex can make scarce facilities available to more children." [194] Presently, the proponents suggest, the critical resources of education—such as guidance counselors, special teachers, and research—may be diffused thinly and unevenly throughout school systems.[195]

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[190] Staff interview with Dr. Henry Handler, Los Angeles Unified School District (Oct. 17, 1966).

[191] Dentler, et al., "The Education Complex Study Project," in *Integrated Education*, 21–30 (June–July, 1965). See also: *Allen Report*, 18–20.

[192] Dentler, *op. cit. supra* note 191, at 27.

[193] *Id.* at 27, 22.

[194] *Id.* at 23. Individual schools lacking adequate play space or equipment, for example, could share the more adequate facilities of other schools in the system. Auditorium, gymnasium, special project, art and music, and diagnostic service space are all unevenly distributed at present.

[195] *Ibid.*

In the complex, it is suggested, a broad range of specially trained teachers could be utilized efficiently to meet a greater variety of student needs.

> [T]eachers may be "pooled" administratively so that the best ways of combining their time and skills, whether through sharing of common classes or exchanges of students or in other ways, can be employed. . . . Teacher exchanges can make teaching innovations more feasible and less costly. Teachers with unique skills can increase their impact on students by periodic release from the confines of a single class within a single school. The same principle applies to special and remedial teachers.[196]

The authors point out that special classes could be established in the component schools, each class centering on a particular subject area or upon a group of students with special abilities, interests, or problems. The central facility, the middle school, could contain even more specialized services. It would offer supplementary training for teachers and house the administration and facilities for research and social services.[197]

The authors believe the complexes would permit decentralized administration, since each cluster of schools could function as a relatively independent organizational unit. It is felt that this would promote organizational efficiency and facilitate the involvement of parents. The authors also suggest that by offering better education to students and improving teaching conditions, the complexes might help retain good teachers and middle-class children in the city public schools. They conclude that in New York, although they would not eliminate segregation, in concert with other changes, they would have a significant effect. In other smaller cities this plan might have an even broader impact.[198]

Education Parks

Plans for education parks embody an idea similar to the concept of the complexes. Expanded attendance areas would be combined with centralized facilities to achieve racial desegregation and improve the quality of education. In recent years these proposals have received considerable attention from city school systems and educators.

There are two important differences between education park proposals and the proposal for education complexes. First, the parks would be new facilities consolidating a range of grade levels on a single

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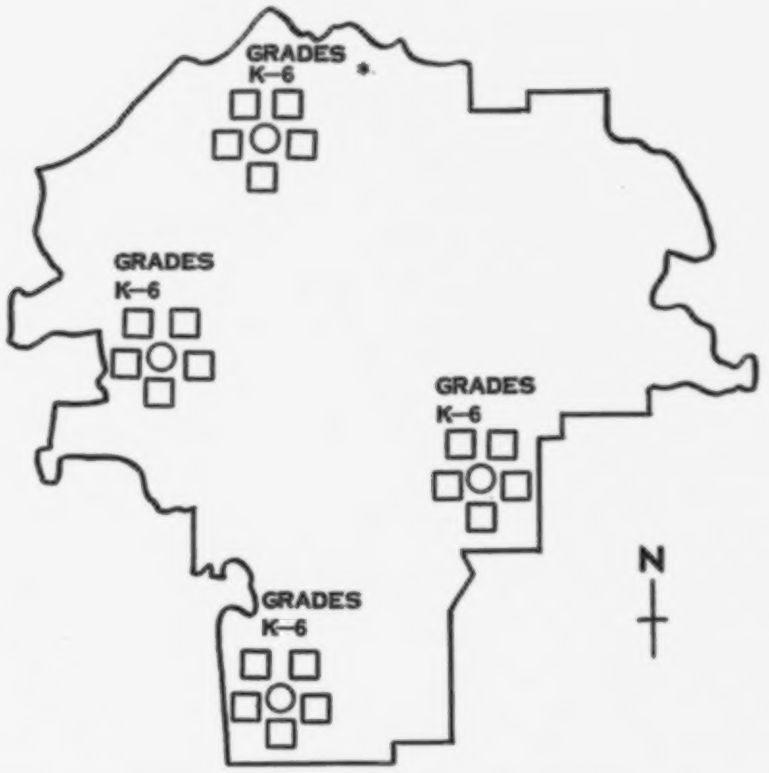
[196] *Ibid.*

[197] *Ibid.*

[198] *Id.* at 22–24. The complex proposal in New York City does not provide full desegregation in the elementary schools. Full desegregation was discussed only for the middle grades. This is not an inherent limitation. Other communities could extend the concept so that the elementary schools would be required to desegregate as well.

Illustration 3. Syracuse Campus Plan



THE 31 ELEMENTARY SCHOOLS WOULD BE CLOSED AND ALL STUDENTS WOULD ATTEND ONE OF FOUR EDUCATIONAL CENTERS.

○ REFERS TO CORE CENTER

☐ REFERS TO SCHOOLS

* THE NORTH SITE HAS NOT YET BEEN SELECTED

campus or site. Second, some proposals for education parks also would draw students from other jurisdictions.

An example of a city which plans an education park system is Syracuse, N.Y. Syracuse, a city of 216,000 population,[109] which has desegregated its secondary schools, has begun planning education parks to house elementary school students. As Illustration 3 shows, four parks, each containing five buildings for elementary classrooms and one central school for specialized services and facilities, would be located on the outer edges of the city. Each would accommodate approximately 5,000 elementary students.[200]

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[109] *USCCR Staff Report: Rochester and Syracuse*, 45.

The purpose of the Syracuse park plan is to improve the quality of education for all elementary children as well as to achieve desegregation. At a Commission hearing Dr. Barry, the Syracuse superintendent, described his reasoning:

> I was born not too far from Syracuse in a very small rural community. And back then it was the desire of every teacher, everybody, to somehow head for Syracuse . . . [it] was the hallmark of achievement to be selected to teach in Syracuse.
>
> The tax base was expanding and growing, industry was moving into the city . . . and then somehow . . . everything has gotten old in the city and tarnished a bit. The sewers are old, the streets are old, the city halls are old and the schools are old. I don't believe that . . . a school that looks like a suburban school with some stone work on it . . . is going to keep people in a city.[201]

Only education of consistently high quality, he maintained, could recreate educational excellence in his city.

> We'd like to have this so it is not only pretty with trees where kids could look at it, but inside would be the best bang-up programs in education in the United States of America. . . .[202]

Syracuse school officials believe the parks would enable all students to receive greater individual attention. Concentration of school resources in their view will permit more counseling, greater flexibility in grouping students for learning, and more efficient use of the abilities of individual teachers.[203]

Size, Location, and Organization

Education park proposals thus far generally contemplate a grouping of several racially desegregated schools serving a student population which may range from 5,000 to 30,000. The proposals vary with respect to such factors as appropriate size, grade organization, and population to be served.

One plan, appropriate for smaller cities, would assemble on one campus all schools—elementary, junior, and senior high—and all students in the community. Another proposed form of organization for larger cities would be to assemble in one park all of the school facilities at a particular level—for example, all of the middle schools or high schools. Other plans for larger cities contemplate a park which would be of comparable size—

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[200] City School District, Syracuse, N.Y., *Application for a Federal Grant To Plan a Supplementary Educational Center and Services*, 8–9 (May 26, 1966). [Hereinafter cited as *HEW Application Syracuse*.]

[201] *Rochester Hearing*, at 462.

[202] *Id.* at 463.

[203] Research Department, City School District, Syracuse, N.Y., *Research Report No. 9–66* (first draft), 3–5 (Feb. 23, 1966).

assembling two or three elementary, junior, and senior high schools—but which would not serve the entire city. The most comprehensive type of proposal for large cities would establish several parks, each serving a different section of a city or a metropolitan area.[204]

Small Cities

The first type of plan—a single education plaza to serve all children in the city—is being developed in East Orange, N.J., a small city of 77,000 in the Greater New York area.[205] The schools of East Orange enroll slightly more than 10,000 students, of whom 69 percent are Negro.[206]

The plaza will replace all existing schools, and education will be offered from nursery school through high school. The facilities will include a K–4 lower school, a 5 to 8 middle school, and a 9 to 12 high school. A central building will house offices, a library and a curriculum center. East Orange will begin to build the middle school in early 1967. Recently the city moved to appropriate funds to permit the purchase of a site for the new plaza.[207]

Berkeley, Calif., a city of about 120,000, has received a Federal planning grant to assist in the development of a system of education parks. A 12-acre site, formerly naval project housing land, may be acquired by the district as the site for the first education park, depending on the outcome of a feasibility study.[208]

Larger Cities

The Board of Education of the City of New York is studying plans for an education park similar in organization to the parks planned in Berkeley and East Orange, but which would serve only a portion of the city. The proposed park, located on a 30-acre site, would include four K–4 schools with a projected enrollment of 2,800 children; four 5 to 8 middle schools with an enrollment of 3,600 pupils; and a comprehensive high school to serve 4,000 pupils.[209]

Pittsburgh, Pa., currently is planning an education park system to serve secondary school students. Five parks serving 15,000 to 20,000 students will be built. Every secondary student enrolled in the Pittsburgh public schools would attend one of these parks. Each park would be so located as to draw a racially and socially heterogeneous student body.[210]

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[204] *App. D2.1,* at 255–256.

[205] The Board of Education, East Orange, N.J., *The East Orange Education Plaza* (undated brochure).

[206] Interview with Robert Seitzer, superintendent, East Orange Public Schools, January 1967.

[207] Office of the Superintendent, East Orange, N.J., press release at 2. [Hereinafter cited as *East Orange Press Release.*] *The East Orange Education Plaza, op. cit. supra* note 205; *East Orange Votes for a Pilot School,* New York Times, Nov. 9, 1966.

[208] Letter from Neil V. Sullivan, superintendent, Berkeley Unified School District, to William L. Taylor, Staff Director, U.S. Commission on Civil Rights, Dec. 13, 1966.

[209] Board of Education of the City of New York, galley proofs for a publication on the education park, gal. 1; see also "Schools Make News," in *Saturday Review,* 93 (Nov. 19, 1966).

Albuquerque, N. Mex., is considering plans to enroll 76,000 students, including Mexican-Americans, Indians, and Negroes, in its park system. Four primary and middle school education parks would be built for 13,000 to 20,000 children. After these schools are completed, high school centers would be constructed. The parks would meet present and projected school needs.[211]

Education park proposals involving wider metropolitan areas contemplate establishment of a series of parks or large schools to serve students from the central city and suburban areas. Each park would be located to draw students from both central city and suburban areas. Such schools would permit desegregation which might not otherwise be possible in metropolitan areas containing cities with majority-Negro student enrollments; they would provide desegregated education of high quality to all students served by the park. A study of the feasibility of a metropolitan park system is presently being conducted for the St. Paul, Minn., school system. The study will evaluate the resources and education needs of St. Paul and the surrounding suburban areas and will assess the utility of a school system serving all levels of education in the metropolitan area.[212]

Quality of Education

Proposals to build educational facilities which would serve as many as 30,000 children raise questions about the impact of size upon the education of children—questions also applicable to the proposals for education complexes. One concern which has been voiced is that education on such a large scale might diminish the attention which could be devoted to the needs of individual children.

Educators who have examined this question, however, agree that while the size of the education parks may pose such problems, the parks may make possible new approaches to teaching and learning, difficult to institute in smaller schools, which would provide greater individual attention for each child's needs.[213] The President's Science Advisory

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[210] Pittsburgh Public Schools, *Education Park*, 4–6 (September 1965). The system plans to convert many of the existing high schools into middle schools.

[211] Staff interview with Dr. Robert Meyers, Assistant Superintendent, Albuquerque Public Schools, Albuquerque, N. Mex. (Sept. 13, 1966).

[212] Staff interview with Norma Jean Anderson, St. Paul Public Schools (December 1966).

[213] City School District, Syracuse, N.Y., *Material for Title III Proposal on the Syracuse Campus Site Plan*, 7 (Mar. 12, 1966). "Educational consultants will be needed to insure that the campus site plan through construction design will offer the highest degree of flexibility for the incorporation of new, superior educational programs and methods of instruction that are available now." See also *App. D2.2.*

Committee has emphasized the importance of such individualized attention:

> The number of years in school, the rate of progress, and the material covered should be determined by the capacities of the individual student, not by the capacities of the average student. . . .[214]

This goal has not been easy to attain. Schools traditionally have placed children in grades with others of the same age, and have promoted them at roughly the same rate. Yet, educators have pointed out that individual children come to school with levels of ability and interests which may vary from subject to subject.[215]

Students of the same age often perform at substantially different levels. The spread of student ability in a given classroom may cover as much as four to five grade levels. Thus, a child who is reading at the fifth-grade level, for example, may be held back in a class where reading is taught at the third-grade level. In the same class, children who cannot read at the third-grade level may fall behind and fail because the instruction is not designed for their needs.[216]

Because schools normally attempt to cover predetermined amounts of material in predetermined periods of time, the problem of the exceptionally able child may not be solved adequately by allowing him to "skip" a grade. The advancement could cause him to miss an important segment of work which he will need to know in connection with his further education. At the same time, John Goodlad, professor of education at the University of California, has pointed out, children who do not keep pace in the conventional grade structure pay a high price. Either they are promoted in spite of their difficulties, and thereby thrust into even greater difficulty the following term, or they are not promoted. Children who are not promoted, "when compared with promoted children of equal past performance and measured intelligence, perform at a somewhat lower academic level, decline in their social relations with other children and in their self-image, and lose interest in school." [217]

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[214] President's Science Advisory Committee, quoted in Brown, "The Nongraded School," in *The Revolution in the Schools*, 103 (Gross and Murphy ed. 1964).

[215] *App. D2.2* at 263. Goodlad reports that educators have not been successful in achieving anything resembling homogeneous classes. Ability grouping has been ineffective since IQ scores are usually unreliable. Achievement grouping has also been ineffective because students vary so much from subject to subject or even within a subject. For example, a child might be excellent in mathematics but poor in reading. Within the subject of math he may be good in problem solving but poor in computation. "We have had little success in achieving anything that could reasonably be called homogeneous classes. . . . It takes a very large school population and constant grouping and regrouping to bring together reasonably homogeneous classes for each subject."

[216] *Id.* at 262. "The grade levels and graded expectations that have characterized the conduct of American education for more than a hundred years appear to be out of phase with today's conceptions of school function and the growing body of evidence about individual differences among children."

[217] *Ibid.*

In an attempt to deal with the problems which traditional grade structures create, children of similar overall achievement in a given grade often are placed in separate groups. Owing to the wide spread of ability in specific subjects, however, educators have found that it is difficult to create truly homogeneous groups.[218]

Some students of the problem have concluded that if more flexible grouping could be provided and the traditional grade structure modified or eliminated, instruction would be more likely to be commensurate with the actual needs of children rather than with their age or grade level. Goodlad has noted that such flexibility already has been created in some schools through the use of nongraded classes and team teaching. Children are organized into large groups. Each group is then broken down into groups of varying size for different activities. The latter are determined not by age or grade, but on the basis of ability and need. A team of teachers is assigned to each large group. Included in such teams are experienced teachers with a variety of skills, specialists, less experienced teachers, and often student teachers.[219] Working with each other gives teachers constant opportunity to exchange ideas and evaluations of individual children. Nongraded classes and team teachers also enable a teacher to give attention to individual children while other teachers work with the larger group.[220]

The education park is seen by some educators as an institution which would offer a wider range of possibilities for individualized instruction through nongraded classes and team teaching than is possible in most existing schools. In a small school it may not be feasible or economical to deal with the special problems or skills of an individual child. In a larger school, where a greater number of children may share the same problem or skill and a larger number of teachers is available, it may be possible to meet the needs of such a child. The larger teaching staff would enable the education park to provide more specialists and teachers with more diverse training and interests to meet the particular needs of children. Rather than being locked into an instructional system which now too often "stereotypes and segregates," children would have the opportunity to achieve based on their capacities and needs in particular subject matter areas.[221]

Educators also have suggested that the education park would enable teachers to devote more attention to the individual needs of children by permitting technological innovations which would not be economical in smaller schools. Computer aids to teaching often are identified as one of the new educational resources which would be made possible in a large institution.

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[218] *Id.* at 263.

[219] *Id.* at 266–268.

[220] *Id.* at 266.

[221] *Id.* at 264; 268. See also Berkeley Unified School District, *A Proposal for a Planning Grant Under Title III Elementary and Secondary Education Act of 1965,* 9 (Aug. 5, 1966). [Hereinafter cited as *Berkeley Proposal.*] Berkeley school officials plan a "special program for each student, whatever his needs." See also *East Orange Press Release* at 4. Superintendent Robert H. Seitzer has stressed "instruction closely tailored to pupil ability levels [and] programs to fit all levels of ability and vocational goals. . . ."

Since computer aids are recent innovations, not many school systems are using them. Efforts at one school, however—the Brentwood School in East Palo Alto, Calif.—have attracted attention. Brentwood, in cooperation with Stanford University, has more than 100 first-grade students spending a half-hour each day learning either arithmetic or reading, assisted by a computerized system. Each student works at an individual computer-desk, consisting of a typewriter keyboard, a microphone and speaker, and a television screen. Reading or arithmetic problems appear on the screen, and the student responds by typing the answer, answering audibly, or marking the screen.[222] The computer keeps instantaneous track of each student's work, provides higher-level materials as his skills increase, and analyzes his work so that teachers and school officials can maintain a daily check on his progress.[223] The advantage to the individual student has been emphasized:

> The decision whether to go on to the next topic or review the last one can be made in accordance with the interests of the child rather than for the class as a whole. In other words, computers can make it possible for people to be treated as individuals in many situations where they are now lumped in the aggregate.[224]

In a paper prepared for the Commission, Dan Lortie, Professor of Education at the University of Chicago, suggests that computer programs may help teachers improve their effectiveness. "The overall effect would be to stress individualistic aspects of the teachers' work—there would be a greater propensity for teachers to ask, 'How can I help this particular child?' "[225]

In another paper prepared for the Commission, Francis Keppel, former U.S. Commissioner of Education, reviewed the possibilities of this new technology in education parks. Keppel cautioned that the use of computer technology depends upon the development of appropriate instructional materials which are now in scarce supply.[226] But assuming appropriate materials can be developed, Keppel believes that the use of computers to assist teaching can be of value, particularly to disadvantaged students:

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[222] Stanford University News Service, Stanford, Calif. "Stanford Photo Story—Brentwood School, East Palo Alto," (undated press release).

[223] *Ibid.* See also Bushnell and Mitter, *A Report to the U.S.C.C.R. on the Computer and the Education Park*, 15, 16 (September 1966).

[224] McCarthy, "Information," in *Scientific American* at 67 (September 1966). See also Suppes, "The Computer and Excellence," in *Saturday Review* 46–50 (January 14, 1967).

[225] *App. D2.4*, at 284.

[226] *App. D2.3*, at 270.

> The computer program has the infinite virtue of patience and has in theory all the time in the world. . . . Computer technology is color blind and has no memory of race.[227]

Computer technology also may relieve teachers of many of the record-keeping chores with which they now are burdened. Keppel explains that, "Right now, computers can rationalize the paperwork load and lift it from the backs of teachers and, of course, administrators." [228] The teacher then would be able to devote more attention to the students.

Another concern expressed about proposed education parks is that their size may impose—particularly upon teachers—a uniformity that will stifle initiative. It has been suggested by Lortie that large parks might involve:

> . . . the replacement of small, dispersed units by a collection of units in a central location, a shift from simple to complex organization, from intimacy in setting to the possibility of impersonality.
>
> The prospect of large and complex organizations may make teachers anxious about the maintenance of personal identity and cause them to worry about the disruption of relationships they currently enjoy.[229]

Whether such fears will prove justified, Lortie says, depends upon the manner in which the facilities are organized and divided into sub-units.[230] All plans for education parks call for distinct and compact units, the size of the units varying with the plan. Educators seek to plan these units so that they will have individual identity and foster close student-teacher relationships.

As Illustration 4 shows, in New York City the plan for an education park calls for four primary units of 700 students each; four intermediate schools containing 900 pupils in each school, and 1,000 students in each of four high school units.[231] In Syracuse, N.Y. (see Illustration 3 on page 168) each of the four campus sites will accommodate five separate elementary school buildings. Each building will have the usual school capacity of 900 children.[232]

Indeed, it has been suggested that far from imposing uniformity, education parks, if properly planned, could provide for diversity and innovation in ways not now possible in smaller units. Lortie, for example, points out that parks properly planned with the participation of teachers would afford special opportunities for teachers. There would

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[227] *Id.* at 271.

[228] *Ibid.*

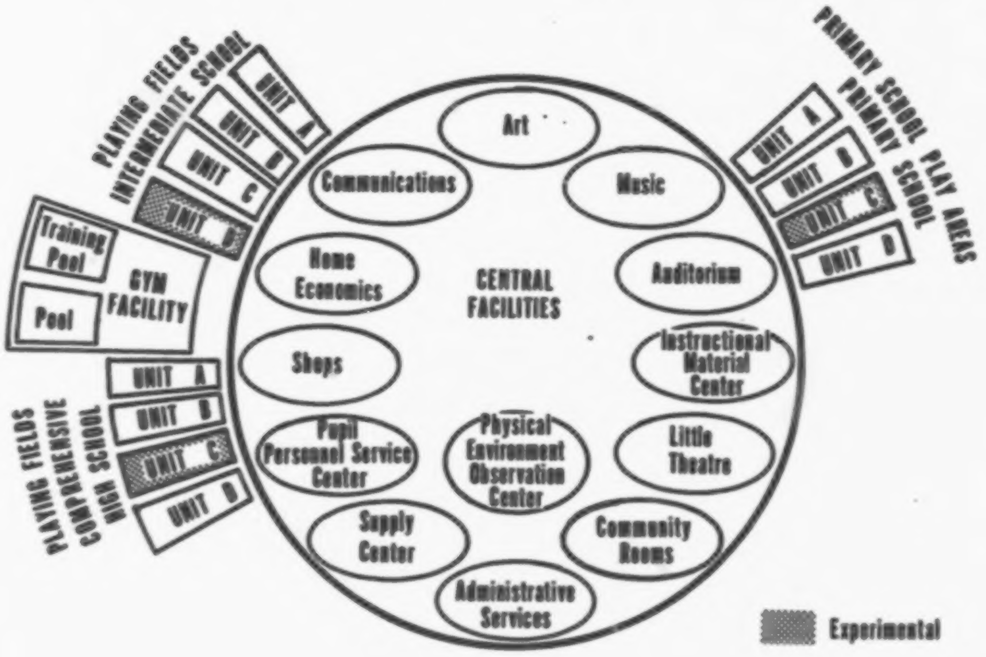
[229] *App. D2.4* at 278.

[230] *Id.* at 279.

[231] "Schools Make News," in *Saturday Review* 93 Nov. 19, 1966.

[232] Syracuse City School District, *Application for Federal Grant To Plan a Supplementary Educational Center and Services,* 9 (May 23, 1966). [Hereinafter cited as *Syracuse Proposal.*]

ILLUSTRATION 4. NEW YORK EDUCATION PARK PLAN


PLAYING FIELDS
INTERMEDIATE SCHOOL
UNIT A
UNIT B
UNIT C
UNIT D
Training Pool
Pool
GYM FACILITY
UNIT A
UNIT B
UNIT C
UNIT D
PLAYING FIELDS
COMPREHENSIVE HIGH SCHOOL
Art
Communications
Music
Home Economics
CENTRAL FACILITIES
Auditorium
Shops
Instructional Material Center
Pupil Personnel Service Center
Physical Environment Observation Center
Little Theatre
Supply Center
Community Rooms
Administrative Services
PRIMARY SCHOOL PLAY AREAS
PRIMARY SCHOOL
UNIT A
UNIT B
UNIT C
UNIT D
Experimental

PLAN FOR NEW YORK'S NEW EDUCATION PARK PROVIDES FOR PRIMARY SCHOOLS FOR 2,800 PUPILS, INTERMEDIATE SCHOOLS FOR 3,600, AND A COMPREHENSIVE HIGH SCHOOL FOR 4,000. STUDENTS WILL BE GROUPED IN UNITS OF 700 EACH IN THE PRIMARY SCHOOLS, 900 IN THE INTERMEDIATE SCHOOLS, AND 1000 IN THE HIGH SCHOOL. THE CENTRAL UNIT WILL OFFER COMMON FACILITIES FOR ALL SCHOOLS IN THE COMPLEX.*

* DIAGRAM ADAPTED FROM SATURDAY REVIEW, NOVEMBER, 1966 AT 93.

be greater opportunities for interaction among teachers who are now isolated in small schools from colleagues with the same skills. Facilities could be provided to afford teachers more privacy than they presently enjoy. Bringing teachers with similar training together might allow them more freedom to develop specialized subject matter skills. The education park, it is said, could provide a laboratory for student teachers who would have the opportunity to observe a greater variety of teaching styles than in a conventional school.

Ties with universities, contemplated by many of the education park plans, would facilitate inservice training for professional teachers and, if the park and university were in close proximity, enable the teachers to take courses during part of the schoolday. Much of the innovation in education today has stemmed from cooperation between schools and universities. "Yet those in universities face a problem in working with school personnel, for direct contact, given the dispersal of neighborhood schools forces the professor to work within a small orbit." [233] Centralized facilities would help to overcome this problem.

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[233] *App. D2.4* at 282.

Lortie concluded, then, that education parks may stimulate diversity rather than uniformity:

> As in the city, denser population leads to greater variety in human relationships and greater diversity in the creation and flow of ideas. Cities, not villages, spawn civilizations; choice among alternatives and cultural riches occurs where ideas and persons mix freely in diverse relationship. Thus the educational complex, if properly used, could produce a higher culture within the school.[234]

Finally, there has been increasing concern in recent years over the lack of initiative and participation by local citizens in the affairs of large urban school systems. Parents and teachers often have felt isolated from the process of educational policymaking. Meaningful citizen participation, however, is difficult to secure where the basic unit of concern is a small school which is only one of a number of schools governed by a single school board. To give each small school its own schoolboard, it may well be argued, would be ineffective as well as unwieldy. Innovations in curriculum, for example, would be difficult to achieve in schools which are small and lack resources.

Some educators, seeking more viable routes for local initiative and participation, have proposed that competing school systems be established in the cities as alternatives to the public schools. In such schools, it is argued, parents and teachers could have a greater voice in policymaking. While alternatives to the public schools have not been examined in this study, it has been suggested that similar advances in community participation are possible in larger institutions, such as education parks. Dr. John Fischer has suggested that education parks would provide more manageable units for decentralized administration. They could be organized with their own school boards, providing a vehicle for more meaningful community participation than is now possible in individual schools: "For the first time it could thus become possible for the citizens in a section of a larger community to have a direct effective voice in the affairs of a school serving their areas." [235]

Feasibility

Proposals for education parks also involve considerations of construction costs, increased need to transport children, use of existing facilities, and other matters related to feasibility.

Construction Costs

Construction of large new schools obviously would involve a major capital investment. Estimates vary, but a review of existing proposals suggests that the capital costs of building classrooms in education parks may range from an amount roughly equal to the cost of regular classrooms to twice that amount. Pittsburgh estimates that education parks could cost twice as much per pupil as the national average cost of regular classrooms.[226] On the other hand, Harold Gores, director of the Educational Facilities Laboratory, has written of proposed education parks:

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[234] *Id.* at 281–82.

[235] *App. D2.1* 258.

> The structure itself would cost less than the conventional ceramic vaults we now build for schools. The experience of New Haven, Conn., in making full use of urban renewal assistance, enabling the city to parlay $13 million of local money into $65 million when State and Federal assistance were applied suggests that the cost of physical plant should lead to economy rather than conventional burden.
>
> The cost of the physical facilities can be at or below prevailing rates of per-pupil cost, depending upon the extent to which modern technology in school design is employed. The notion that an education park must have a hundred acres of city land is a reflex action from a suburban syndrome.[227]

In any event, at least part of the costs of building an education park would be incurred because of the need to build new classrooms to replace outworn structures and accommodate a growing student population. The U.S. Office of Education has noted that there is a pressing national need for new classrooms. On the basis of statistics collected from the States and local school systems it has estimated that more than 500,000 new classrooms are needed to replace those which presently are inadequate.[228]

The Syracuse school administration has concluded that traditional scattered school sites in the core city might be more costly than the parks. Population change and possible urban renewal in both the ghetto and business districts have made planning for traditional facilities an uncertain venture. After study, the school authorities decided that the cost of building the campus schools could be borne by the district. Existing facilities will be phased out as the new schools are completed.[230]

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[226] Pittsburgh estimates the total cost of its education parks at $75 million. The number of pupils in attendance will be between 22,500 and 27,500. Therefore, the cost per pupil will be approximately $3,000. In Syracuse the figure comes to $1,679 per pupil. U.S. Office of Education, memo, *Cost Analysis of Proposed Educational Park Facilities*, 5 (July 1966). The national average cost per pupil of school construction in 1965 was $1,612. "Current Trends in School Facilities" in *School Management*, 77 (July 1966.)

[227] Gores, "Education Park: Physical and Fiscal Aspects," in *An Exploration of the Educational Park Concept*, 5–6 (Jacobson ed. June 22–24, 1964).

[228] U.S. Office of Education, *Projections of Educational Statistics to 1974–75*, 40 (1965). This figure is determined by adding the makeshift or improvised classrooms (31,000), the nonpermanent rooms (31,000), the rooms rented off-site (14,000), the rooms with three or more defects (158,000), and those needed to achieve a pupil-room ratio of 25 elementary and 20 secondary pupils (285,000).

[230] Research Department, City School District, Syracuse, N.Y., *Research Report No. 9–66*, (first draft) 1–3, Feb. 23, 1966.

Offsetting the substantial capital costs of education parks, it has been suggested, is economy made possible by the central location of certain kinds of needed facilities, such as libraries, science laboratories, and auditoriums. Franklyn Barry, asked if planned campus schools in Syracuse would permit economies, replied:

> We have no libraries except voluntary ones in any of the schools in Syracuse. Every other county school from here to Buffalo and back has libraries, and I think children in Syracuse should have libraries. We can do this in 4 centers, but we can't do it in 30.[240]

Use of Existing Facilities

School systems now exploring the construction of education parks have proposed a number of alternative uses of existing school space. In East Orange, N.J., the school board has decided to sell existing schools as they are replaced with buildings in the new education plaza. This decision was based on a study which concluded that the sale of the buildings could offset substantially the cost of building the new schools.[241] Pittsburgh school officials are considering using existing high schools as middle schools when the high schools are replaced by parks.[242] In New York City, a report to the board of education proposed that education complexes become the first step in the construction of a system of education parks.[243]

In other cities, it has been suggested that existing schools which are replaced by the education parks could be converted to a variety of new uses. The most common suggestion is conversion to preschool centers in view of increasing interest in and governmental support for preschool programs. Other suggested alternatives include libraries, community and adult education centers, and recreational facilities.[244]

Construction Time

A related problem is the time it will take to build education parks. Time is required for educational and physical planning, for the acquisition and assembling of land, and for construction. Assembling the necessary land for schools already is a formidable task in larger cities, where congestion is great and demand is high.

Education parks may require larger parcels of land and may involve more than one school jurisdiction. The construction process itself, on the other hand, may not be a major obstacle. Some of the Nation's largest and most complicated school buildings have been constructed in short periods of time. For example, the new 3,000-student Bronx High School of Science in New York City—regarded as one of the finest specialized high schools in the Nation—took three years to build. A new highly diversified vocational and technical school was built in about a year and a half in Las Vegas, Nev., with modern construction methods.[245] Parts of the South Florida Education Center in Fort Lauderdale, a modern and well-equipped high school and a junior college, were completed in less than four years.[246]

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[240] Testimony of Superintendent Barry of Syracuse, *Rochester Hearing*, 464.

[241] *East Orange Press Release* at 2. William Hoffman, president of the school board, points out that the sale of the schools would yield an additional benefit from their inclusion in the city's ratables. It is also expected that another sizable part of the plaza's cost may be defrayed by governmental agencies and educational foundations.

[242] Harvard Graduate School of Education, *Education for Pittsburgh*, 16–17 (1966).

[243] Dentler, *op cit. supra* note 191, at 29.

[244] *App. D2.1* 258. "The impending expansion of nursery school programs and adult education are only two of the more obvious alternate uses for in-city structures." See also Sessions, "A New Approach to Education in the District of Columbia," at 4 (undated paper). Sessions proposes that existing school buildings in Washington, D.C., be converted for housing purposes.

Funds for the New York City education park are included in the budget for 1967–68 and completion is expected two years from the commencement of the construction.[247]

East Orange and Syracuse, however, have estimated the time needed to complete their education parks to be 12 to 15 years.[248] A major constraint is lack of construction funds, even though both cities are relatively small and require relatively few schools. The timing of construction in larger cities needing more schools would appear to be an even greater problem under present arrangements for financing school construction. Were Federal funds available, it is likely that construction could move more rapidly than these estimates suggest. Presently, the Federal contribution to public school construction costs is less than 1 percent of the total.[249]

Transportation

Another aspect of the feasibility of education parks involves the increased need to transport children which would result from the enlarged attendance areas.

In 1964, about 15 million public school children traveled to school on school-leased or owned carriers each school day. This figure represents about 40 percent of the Nation's total school enrollment and does not include children who use nonschool public transportation.[250] In four of the Nation's largest cities between 15 and 30 percent of the total school enrollment uses public transit facilities.[251]

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[245] Interview with Alexander Taffel, principal, Bronx High School of Science (December 1966). Interview with Raymond L. Sturm, Southern Nevada Vocational Technical Center (Nov. 30, 1966).

[246] "Where a 'School of the Future' is Holding Classes Today," in *U.S. News & World Report* at 36, July 5, 1965.

[247] "Schools Make News," in *Saturday Review* at 93 (Nov. 19, 1966).

[248] *East Orange Press Release*, 2. Telephone interview with David Sine, research director, Syracuse Public Schools (January 19, 1967).

[249] U.S. Office of Education, *Estimated Capital Outlay for Public Elementary and Secondary School Facilities*, unpublished table (April 1966). See also: *School Management*, at 75 (July 1966). It is noted that $3.43 billion were spent in 1965 on elementary and secondary additions and new schools.

[250] U.S. Office of Education, *Digest of Educational Statistics*, 29 (1965). Also, interview with E. Glen Featherston, U.S. Office of Education (December 1966). The Office of Education's statistics on pupil transportation generally omit pupils who travel on public transportation. Mr. Featherston stated that "the number of children transported to school on public rather than school-owned or school-leased facilities has not been ascertained in over 15 years."

In view of the widespread practice of transporting students to school, school systems long since have taken measures to assure the greatest possible safety. The problems related to student transportation are largely logistical. In a paper prepared for the Commission, Paul Davidoff, Chairman of the Department of City Planning at Hunter College in New York City, studied the feasibility of establishing desegregated education park sites in the Philadelphia Metropolitan Area, one of the Nation's largest metropolitan regions.[252] The study revealed there are many locations in the area where city Negroes and suburban whites could attend education parks together with relatively little travel time. The report indicated that travel time for most students could be limited to less than 40 minutes.[253]

The cost of transportation obviously is a factor in the feasibility of education park plans. The cost would depend in part upon the availability of mass transportation. Some proposals suggest one possibility of coordinating plans for education parks with plans for the development or improvement of mass transit systems. Pittsburgh has taken such an approach to rapid mass transit and education park site location.[254] Berkeley, Calif., too, has asked representatives from local transit authorities to participate in the planning of their parks.[255]

Metropolitan Attendance

A final consideration of feasibility is the need for ingtergovernmental cooperation which would be entailed in education park plans that contemplate drawing students from suburban jurisdictions as well as from the city. School boards either would have to merge or share authority, staff, and funds. State education agencies might have to sanction these arrangements.[256] Yet, as Robert Wood, Under Secretary of Housing and Urban Development, has written:

> . . . each jurisdiction tries to avoid the conditions it regards as unpalatable, to protect its own, and to let its neighbors fend for themselves.[257]

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[251] These cities are Washington, D.C., Philadelphia, New York City, and Chicago. Information received from the D.C. Transit Co., Chicago Transit Authority, Philadelphia Transportation Co., New York City Transit Authority.

[252] Davidoff, *Position Paper*, submitted to the U.S. Commission on Civil Rights (November 1966).

[253] *Id.* at 19.

[254] McPherson, *A Survey of Opinions and Perceptions Regarding Continuing Racial Integration of Central City Public School Systems*, at 9 (October 1966). "Mr. David Lewis and members of his staff at Urban Design Associates . . . [have] provided consultant services for both the Port Authority and the public school system, and [have] been able to relate the bold plans for a rapid transit system network in Pittsburgh to the design and location of large high schools."

[255] *Berkeley Proposal* at 7.

[256] *App.* D2.1 at 257.

[257] Wood, *Metropolis Against Itself*, 41 (March 1959).

Given the tendency of school districts to guard their prerogatives jealously, consolidation or merger has been accomplished infrequently. Big cities typically lack authority to annex unilaterally. Even if there were agreement among districts, in some States merger can be accomplished only by popular referendum. Although States in most cases can require merger or consolidation, they have done so primarily for rural districts not urban or suburban districts.[258] (The question of whether Congress has the authority to require school desegregation, notwithstanding such obstacles, is discussed in the next chapter.)

It has been pointed out, however, that the reasons that have prompted consolidation of rural schools districts have some application to urban and suburban school districts. As one educational planner has written:

> . . . the concept is not entirely new to public education in the United States. School consolidation in rural areas had a purpose similar to one of the purposes of the city education park—the collection of enough students at one point to make better quality education economically possible. Just as the consolidated rural school could offer educational opportunities unmatched by small schools it replaced, the educational park in the city . . . could offer chances to city youngsters which are unavailable in their neighborhood schools.[259]

The size and fragmentation of school districts within metropolitan areas suggests that there may be a need for consolidation. In the Nation's 212 metropolitan areas in 1962, there were approximately 6,000 independent school districts and 600 dependent school districts, an average of 21 school systems for each metropolitan area. More than one-third of the school districts in metropolitan areas serve less than 300 students.[260] Many States, based on the judgment of educators that a sound educational program requires larger numbers of students, have encouraged the consolidation of school districts.[261]

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[258] Interview with Robert Isenberg, Director of Rural Services Division, National Education Association (Jan. 9, 1967).

[259] Mauch, "The Education Park" in *American School Board Journal,* 9 (March 1965).

[260] Beckman, *Metropolitan Education in Relation to State and Federal Government,* 14–15 (unpublished draft).

[261] Wisconsin, Nebraska, Pennsylvania, and Delaware are among the States with school district consolidation programs. Wisconsin had approximately 3,000 school districts in 1960 and in 1966 it had only 535. (Telephone interview with Mr. Van Raelte, Assistant in charge of Instructional Services, State Deparement of Education, Dec. 2, 1966.) In 1964 Nebraska had 2,700 school districts and in 1966 this number had been reduced to 2,400. The number of school districts is being reduced at a rate of 200 per year. (Telephone interview with Mr. Donald Stewart, consultant, State Department of Education, Dec. 2, 1966.) Under an act passed by the Pennsylvania Legislature in 1963, the number of school districts has been reduced from over 2,000 in 1963 to 742 in 1966. (Telephone interview with Walter Heckman, supervisor, School District Organization, Department of Public Instruction, Dec. 2,

Footnote continued on following page.

In summary, there are many promising plans for desegregating schools and improving the quality of education in the Nation's larger cities and metropolitan areas. These plans contemplate giving more attention to the individual needs of all students in schools which would serve broad segments of the community. All of the proposals incorporate the idea that only a combination of school desegregation and improved educational quality will solve the problem of educational inequality in the cities. All are based on the view that this can best be accomplished through the expansion of attendance zones and the consolidation of school resources.

A number of questions have been raised concerning these proposals, relating to considerations both of educational soundness and feasibility. The educational problems chiefly concern the size of the proposed education parks and the obstacles which such size might place in the way of devoting attention to the individual needs of students. The most substantial problems of feasibility center upon cost, including the cost of transportation and the lack of existing funds at the local and State levels.

Educators who have examined the problems relating to size and complexity have concluded that education parks, properly planned, could in fact provide higher quality education and even greater individual attention to the needs of all students by permitting advances and innovations in educational techniques which are not now possible in smaller schools.

Although larger school facilities such as education parks would permit economies through the consolidation of resources, they would still be costly. The additional investment required, however, does not appear to be beyond the range of what is feasible if the costs are shared by the Federal, State, and local governments. The major question is one of policy—whether the desegregation of public schools and the improvement of the quality of education for all children are goals of sufficient importance to justify the required investment of energy and resources.

1966.) In Delaware the number of school districts has been reduced from 80 in 1965 to 51 in 1966. (Telephone interview with Mrs. Sheila Garrow, Administrative Service Department, State Department of Education, Dec. 2, 1966.)

Other States which are reducing the number of school districts are New York, Ohio, Michigan, Illinois, Minnesota, California, Kansas, Washington, Oregon, North Dakota, Mississippi, North Carolina, and South Carolina. (Interview with Dr. Robert Isenberg, Director of Rural Services Division, National Educational Association, Dec. 2, 1966.)

Chapter 5

Racial Isolation: The Role of Law

This report has examined the causes of racial isolation in the public schools, the attendant damage to Negro children, and remedies attempted by particular school systems. This chapter summarizes the role of law—judicial decisions in cases challenging both racial isolation in the schools and efforts by State and local authorities to correct it; State legislation and administrative action to overcome racial isolation, and the role of the Federal Government. The analysis presented here is more fully developed and documented in the appendix in this volume of the report.

The Constitutional Duty of a State To Eliminate Racial Isolation—The Judicial Decisions

In 1954, the U.S. Supreme Court decided in *Brown* v. *Board of Education* that public school segregation compelled or expressly permitted by law violated the equal protection clause of the 14th amendment.[1] Later decisions have applied *Brown* to purposeful school segregation resulting from administrative actions of State or local public officials even where such segregation is not dictated or sanctioned by State or local law.[2] The courts have indicated that such purposeful segregation is unconstitutional even where it is less than complete,[3] and even when it is accomplished by inaction rather than by action.[4]

The courts have not been so ready to declare adventitious segregation—segregation not resulting from purposeful discrimination by school authorities—unconstitutional. The Supreme Court has not ruled on this issue. The lower Federal courts and the State courts are divided, but a majority of the courts have held that school boards are under no

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[1] 347 U.S. 483 (1954).

[2] E.g., *Taylor* v. *Board of Education* (New Rochelle), 191 F. Supp. 181 (S.D. N.Y.), aff'd, 294 F. 2d 36 (2d Cir.), cert. denied, 368 U.S. 940 (1961).

[3] *Taylor* v. *Board of Education* (New Rochelle), supra; *Jackson* v. *Pasadena City School District*, 31 Cal. Rptr. 606, 382 P. 2d 878 (1963).

[4] *Webb* v. *Board of Education* (Chicago), 223 F. Supp. 446 (W.D. Ill. 1963).

Federal constitutional duty to remedy racial imbalance.[5] On the other hand, the courts have upheld State and local remedial measures against the contention by white parents that it is unconstitutional to take race into account in assigning students to schools.[6]

Actions by States to Eliminate Racial Isolation

Thus, the result of most judicial decisions to date has been to leave the question of remedying racial imbalance to the legislative and executive branches of the Federal and State Governments. A small number of States—including Massachusetts, New York, New Jersey, and California—have taken steps to require school authorities to take corrective action.[7]

The most advanced requirements include a Massachusetts law and a requirement of the New York State Commissioner of Education, each of which obligate local school officials to eliminate racial imbalance in their schools. The Massachusetts legislature has defined a racially imbalanced school as one where the percentage of nonwhites exceeds 50 percent of the total enrollment.[8] The New York Commissioner of Education has defined a racially imbalanced school as one having 50 percent or more Negro pupils enrolled.[9] Massachusetts has provided the strongest sanctions. If a school committee fails to show progress within a reasonable time in eliminating racial imbalance in its school system, the Commissioner of Education must refuse to certify all State school aid for that system.[10] But the great bulk of the States have not imposed any requirement that local school officials correct racial imbalance in their schools.

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[5] Compare *Branche* v. *Board of Education* (Hempstead), 204 F. Supp. 150 (E.D. N.Y. 1962); *Blocker* v. *Board of Education* (Manhasset), 226 F. Supp. 208 (E.D. N.Y. 1964); *Barksdale* v. *Springfield School Committee,* 237 F. Supp. 543 (D. Mass. 1965), order vacated, 348 F. 2d 261 (1st Cir. 1965); *Jackson* v. *Pasadena City School District,* 31 Cal. Rptr. 606, 382 P. 2d 878 (1963) with *Bell* v. *School City of Gary,* 324 F. 2d 209 (7th Cir. 1963); *Downs* v. *Board of Education* (Kansas City), 336 F. 2d 988 (10th Cir. 1964); *Swann* v. *Charlotte-Mecklenburg Board of Education,* Civ. No. 10207, 4th Cir., Oct. 24, 1966; *Deal* v. *Cincinnati Board of Education,* No. 16863, 6th Cir., Dec. 6, 1966; *Gilliam* v. *School Board* (Hopewell), 345 F. 2d 325 (4th Cir. 1965); *Lynch* v. *Kenston School District Board of Education,* 229 F. Supp. 740 (W.D. Ohio 1964).

[6] E.g., *Balaban* v. *Rubin,* 20 App. Div. 2d 438, 248 N.Y.S. 2d 574, aff'd, 14 N.Y. 2d 193, 250 N.Y.S. 2d 281, cert. denied, 379 U.S. 881 (1964); *Strippoli* v. *Bickal,* 21 App. Div. 2d 365, 367, 250 N.Y.S. 2d 969, 972 reversing 42 Misc. 2d 475, 248 N.Y.S. 2d 588 (1964); *Di Sano* v. *Storandt,* 22 App. Div. 2d 6, 253 N.Y.S. 2d 411 (1964), reversing 43 Misc. 2d 272, 250 N.Y.S. 2d 701 (1964); *Fuller* v. *Volk,* 230 F. Supp. 25 (D. N.J. 1964), vacated and remanded, 351 F. 2d 323 (3rd Cir. 1965); *Morean* v. *Board of Education* (Montclair), 42 N.J. 237, 200 A. 2d 97 (1964).

[7] Mass. Gen. Laws, ch. 15, sec. 1–I; ch. 71, secs. 37C, 37D (1965); memorandum from the State Commissioner of Education to all Chief Local School Administrators and Presidents of Boards of Education, 8 *Race Rel. L. Rep.* 738, 739 (N.Y. Comm. of Ed. 1963); *Booker* v. *Board of Education* (Plainfield), 45 N.J. 161, 178, 212 A. 2d 1, 10 (1965); Cal. Admin. Code, title V, secs. 2001, 2010, 2011.

[8] Mass. Gen. Laws, ch. 71, sec. 37D (1965).

[9] Memorandum from the State Commissioner of Education to all Chief Local School Administrators and Presidents of Boards of Education, *supra.*

The Congressional Response

In the Civil Rights Act of 1964, Congress authorized the Attorney General to bring school desegregation suits in certain circumstances,[11] empowered the Commissioner of Education to give technical and financial assistance to desegregated school districts,[12] and gave the Department of Health, Education, and Welfare the power to withhold financial assistance from school districts engaging in discrimination.[13] But this legislation does not appear to dictate the imposition of sanctions solely for failure to overcome racial imbalance in the schools or to authorize assistance to school districts to help them correct such imbalance.[14] Under the Elementary and Secondary Education Act of 1965, HEW encourages efforts to develop project activities which will tend to reduce such imbalance, but is precluded from requiring "the assignment or transportation of students or teachers in order to overcome racial imbalance." [14a]

The Need for a Congressional Remedy

This report describes inequalities in public schools which require corrective action. Neither the courts nor State authorities generally have required school officials to provide a remedy. Absent congressional action, therefore, there is no assurance that the present serious inequities will be remedied.

While it is conceivable that the courts may go further in finding a constitutional duty than they have been willing to go thus far, congressional action affords greater promise for effective relief than judicial action. The courts are overburdened, and, lacking power to give advisory opinions, they must proceed on a case-by-case basis. Congress, on the other hand, can establish a uniform, national standard.[15]

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[10] Mass. Gen. Laws, ch. 15, sec. 1–I (1965).

[11] 78 Stat. 246 (1964), 42 U.S.C. § 2000c–6 (1964).

[12] 78 Stat. 246 (1964), 42 U.S.C. § 2000c–2 (1964).

[13] 78 Stat. 252 (1964), 42 U.S.C. § 2000d–1 (1964).

[14] 78 Stat. 248 (1964), 42 U.S.C. § 2000c–6 (1964). *United States* v. *Jefferson County Board of Education,* Civ. No. 23345, 5th Cir., Dec. 29, 1966. The Office of Education is rendering assistance under Title IV to northern schools systems in meeting certain problems arising from measures which such systems independently have taken to overcome racial imbalance. See Legal Appendix, *infra,* at 223, n. 124. In the 89th Congress, Senator Edward Kennedy of Massachusetts introduced a bill (S. 2928, 89th Cong. 2d sess.) to amend Title IV of the Civil Rights Act of 1964 to authorize the Commissioner of Education to provide technical assistance and grants to school boards in support of programs designed to overcome racial imbalance.

[14a] Public Law 89–750, sec. 181 (1966); Letter from Commissioner Howe to Chief State School Officers, August 9, 1966; Statement of Office of Education re Impact of Title I, Elementary and Secondary Education Act of 1965 (P.L. 89–10) on De Facto Segregation; Manuscript, Transcript of Hearing before U.S. Commission on Civil Rights, Oct. 5, 1966, Boston, Mass., p. 479. See Legal Appendix, *infra,* at 223.

In addition, legislation by Congress in the civil rights field commands far greater acceptance than decisions of the Federal courts. For example, a Supreme Court decision overturning the convictions of the sit-in demonstrators on the ground that the 14th amendment required the owners of places of public accommodation to serve Negroes could not have commanded the same degree of assent as the public accommodations title of the Civil Rights Act of 1964.[16] The Voting Rights Act of 1965 produced much greater voluntary compliance with the 15th amendment by voting registrars throughout the South than the dozens of Federal court decisions enjoining voting discrimination against Negroes which preceded it.[17]

Equally important, since appropriate remedies may require expenditures of substantial sums of money, particularly where school construction may be involved, Congress, with its power to appropriate funds and to provide Federal financial assistance, is far better equipped than the courts to provide effective relief.

The Power of Congress To Enact Legislation Eliminating Racial Isolation

The Constitution confers upon Congress the power to require the elimination of racial isolation in the public schools.

Section 1 of the 14th amendment prohibits any State from denying to any person within its jurisdiction equal protection of the laws. Section 5 gives Congress power to enforce the amendment by "appropriate legislation." Recent Supreme Court decisions make it clear that Section 5 is an affirmative grant which authorizes Congress to determine what legislation is needed to further the aims of the amendment.[18]

The decisions establish that Congress may legislate not only to correct denials of equal protection but also to prevent or forestall conditions which may pose a danger of such denial. In *Katzenbach* v. *Morgan*,[19] the Court upheld Section 4(e) of the Voting Rights Act of 1965,[20] which provides in effect that no person who successfully has completed the sixth grade in a Puerto Rican school where instruction is in Spanish

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[15] See *United States* v. *Jefferson County Board of Education*, *supra* note 14.

[16] See Cox, "Constitutional Adjudication and the Promotion of Human Rights," 80, Harv. L. Rev. 91 (1966).

[17] U.S. Commission on Civil Rights, "The Voting Rights Act . . . the first months" 2, 8, 9 (1965).

[18] *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966); *United States* v. *Guest*, 383 U.S. 745 (1966). See *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966).

[19] 384 U.S. 641 (1966).

[20] 79 Stat. 439 (1965).

shall be denied the right to vote because of inability to read or write English. Section 4(e) nullified New York State's English literacy requirement. The Court sustained Section 4(e) partly on the ground that its practical effect was to enfranchise large segments of New York's Puerto Rican community. "This enhanced political power," said the Court, "will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community," thereby enabling it to obtain "perfect equality of civil rights and equal protection of the laws." [21]

Similarly, whether or not racial isolation itself constitutes a denial of equal protection, Congress may secure equal educational opportunity by eliminating the conditions which render the education received by most Negroes inferior to that afforded most white children. Such conditions involve, in part, the harmful effects upon attitudes and achievement which racial and social class isolation have on Negro students. Corrective congressional action also may be seen as a means of enabling Negroes, who generally are poorer than whites, attend schools of lower quality, and exercise less influence upon school boards, to obtain educational facilities equal to those obtained by white persons.

The *Morgan* case also establishes that Congress may determine for itself that a particular form of State action constitutes a violation of the equal protection clause, whether or not the Supreme Court has so ruled or would so rule, and regardless of the view of lower Federal courts. In *Morgan,* the Supreme Court sustained Section 4(e) on the alternative ground that the Court perceived "a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the equal protection clause." [22]

There are ample grounds for a congressional determination that racial imbalance contravenes the equal protection clause. Clearly there is "State action," since public officials select school sites, define attendance areas, and assign Negroes to schools in which they are racially isolated. The resulting harm to Negro children involves a denial of equal protection of the laws.

Although the holding in *Brown* v. *Board of Education* was confined to school segregation compelled or expressly permitted by law, the rationale of the *Brown* opinion was that public education, ". . . where the State has undertaken to provide it, is a right which must be made available to all on equal terms," [23] and that segregated education is unequal education. This also was the rationale of *Sweatt* v. *Painter* [24] and *McLaurin* v. *Oklahoma State Board of Regents for Higher Education,*[25]—predecessors of *Brown*—which respectively held violative of the "separate but equal" rule of *Plessy* v. *Ferguson*[26] segregated law school and graduate school education.

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[21] 384 U.S. 641, 652–653.

[22] *Id* at 656.

[23] 347 U.S. at 493.

[24] 339 U.S. 629 (1950).

The basis of these decisions was that Negroes were treated unequally with respect to qualities "incapable of objective measurement," in large measure because they were isolated from the majority group. In *Sweatt,* among the vital immeasurable ingredients which the Court considered in comparing the University of Texas law school with the separate Negro law school was the exclusion from the Negro institution of members of racial groups which included most of the lawyers, judges, witnesses, jurors, and public officials with whom the Negro law student would have to deal when he became a member of the bar. The Court also considered the comparative "standing in the community" of the two institutions.

In *Brown,* the Court ruled that the intangible considerations involved in depriving Negro students of the opportunity for association with members of the majority group applied "with added force" to children in elementary and secondary schools.[27] The Court concluded: "To separate them [Negro children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."[28]

The Court recognized that segregation even without the sanction of law was harmful to Negro children, for it quoted with approval from a lower court finding stating: "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is *greater* when it has the sanction of law."[29] As one Federal court put it, grade school children "are not so mature and sophisticated as to distinguish between the total separation of all Negroes pursuant to a mandatory or permissive State statute based on race and the almost identical situation prevailing in their school district [without such a statute]."[30]

The facts in this report confirm that racial isolation, whether or not sanctioned by law, damages Negro students by adversely affecting both their attitudes and achievement. Negro pupils attending predominantly Negro schools tend to have lower educational aspirations, feel more frequently that they are unable to control their own destinies, have a poorer self-image, and have teachers with lower expectations than similarly situated Negro students attending predominantly white schools.

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[25] 339 U.S. 637 (1950).

[26] 163 U.S. 537 (1896).

[27] 347 U.S. at 494.

[28] *Ibid.*

[29] *Ibid.* [Emphasis added]

[30] *Blocker* v. *Board of Education* (Manhasset), 226 F. Supp. 208, 229 (E.D. N.Y. 1964).

These differences in part are associated with differences in the comparative social class levels of the average predominantly Negro and the average predominantly white school—differences which, given the relatively small Negro middle class, cannot be erased without school integration.

Beyond this, however, a major factor in these differences is racial isolation itself, even when social-class factors are held constant. Just as segregation imposed by law was held in *Brown* to create feelings of inferiority among students affecting their motivation and ability to learn, so there is evidence that adventitious segregation is accompanied by a stigma which has comparable effects. The superior "standing in the community" of the white law school in *Sweatt* v. *Painter*[31]—a superiority which the Court held to conflict with the equal protection clause—is echoed in the superior reputation of predominantly white elementary and secondary schools as compared to similar institutions which are predominantly Negro and stigmatized in the eyes of the community as well as in the eyes of the teachers and students.

The deprivation of educational contact with the majority group which the Court deemed so important in *Sweatt* because that group included most of the lawyers, jurors, and witnesses with whom a lawyer inevitably deals, finds its analogue in the limited opportunity for educational association with members of the majority group available to Negro students in predominantly Negro elementary or secondary schools. Lack of contact with white persons impairs the ability of the Negro student to relate to members of a group with whom he later may have to associate to achieve success in the job market and in other areas of life.

Where a State law or policy has a discriminatory effect, a discriminatory purpose need not be shown.[32] Just as in reapportionment cases the courts have not demanded a showing of discriminatory purpose in requiring the correction of an imbalance in the allocation of seats in the legislature resulting from legislative inaction in the face of population shifts, no discriminatory purpose need be shown to invalidate racial imbalance in the schools, which frequently is the product of administrative inaction in the face of population changes in the racial composition of neighborhoods.[33]

There are still other bases upon which Congress constitutionally may legislate to correct racial imbalance. As shown in Chapter 2 and in the legal appendix, discriminatory policies of the Federal Housing Administration (FHA), in violation of the due-process clause of the 5th amendment,[34] and discriminatory practices and other actions of State and local agencies in violation of the 14th amendment, including judicial enforcement of racially restrictive covenants, have played an important role in present patterns of housing segregation. Congress, which even without any express authorization has the power to implement any right secured by the Constitution,[35] may act to insure that 5th amendment violations by the Federal Government are not compounded by the States, and that the States do not perpetuate their own violations of the Constitution, through the application of the neighborhood school policy, even assuming that such a policy is not otherwise discriminatory.

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[31] 339 U.S. at 634.

[32] *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Douglas* v. *California,* 372 U.S. 353 (1963); *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663 (1966). See *Rice* v. *Elmore,* 165 F. 2d 387, 392 (4th Cir. 1947), cert. denied, 333 U.S. 875 (1948).

[33] *Baker* v. *Carr,* 369 U.S. 186 (1962); *Reynolds* v. *Sims,* 377 U.S. 533 (1964); *Hearne* v. *Smylie,* 225 F. Supp. 645 (D. Idaho 1964), rev'd per curiam, 378 U.S. 563 (1964).

Congress may require the States to provide metropolitan solutions, either through reorganization of school districts or cooperative arrangements among school districts, where racial isolation cannot be corrected within the limits of the central city. The equal protection clause speaks to the State,[36] and school districts are creatures of the State.[37] A State cannot avoid its constitutional obligation to afford its school children equal protection of the laws by pointing to the distribution of power between itself and its subdivisions—a distribution which the State itself has created. "If the rule were otherwise, the great guarantee of the equal protection clause would be meaningless." [38]

In legislating to implement the 14th amendment, Congress need not limit itself to suspending offensive State legislation but, like the courts, may require States to take affirmative steps to secure equal rights.[39] Inconsistent State statutes or constitutional provisions, of course, must yield to the lawful acts of Congress under the supremacy clause of the Constitution.[40]

There is ample basis for concluding, therefore, that Congress can enact the laws necessary to eliminate racial isolation and to secure to Negroes equality of opportunity in the public schools.

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[34] FHA "Underwriting Manual," pt. II, sec. 304 (1935); pt. II, sec. 228 (1936); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954).

[35] *Strauder* v. *West Virginia*, 100 U.S. 303, 310–311 (1880); *Prigg* v. *Pennsylvania*, 16 Pet. 539 (1842); *Ableman* v. *Booth*, 21 How. 506 (1859); *Burroughs and Cannon* v. *United States*, 290 U.S. 534 (1934).

[36] *Griffin* v. *County School Board*, 377 U.S. 218 (1964); *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649 (E.D. La. 1961), aff'd, 368 U.S. 515 (1962).

[37] *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178 (1907).

[38] *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. at 658.

[39] See *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); *Douglas* v. *California*, 372 U.S. 353 (1963); *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *Reynolds* v. *Sims*, 377 U.S. 433 (1964); *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966).

[40] *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819).

Conclusion

The central truth which emerges from this report and from all of the Commission's investigations is simply this: Negro children suffer serious harm when their education takes place in public schools which are racially segregated, whatever the source of such segregation may be.

Negro children who attend predominantly Negro schools do not achieve as well as other children, Negro and white. Their aspirations are more restricted than those of other children and they do not have as much confidence that they can influence their own futures. When they become adults, they are less likely to participate in the mainstream of American society, and more likely to fear, dislike, and avoid white Americans. The conclusion drawn by the U.S. Supreme Court about the impact upon children of segregation compelled by law—that it "affects their hearts and minds in ways unlikely ever to be undone"—applies to segregation not compelled by law.

The major source of the harm which racial isolation inflicts upon Negro children is not difficult to discover. It lies in the attitudes which such segregation generates in children and the effect these attitudes have upon motivation to learn and achievement. Negro children believe that their schools are stigmatized and regarded as inferior by the community as a whole. Their belief is shared by their parents and by their teachers. And their belief is founded in fact.

Isolation of Negroes in the schools has a significance different from the meaning that religious or ethnic separation may have had for other minority groups because the history of Negroes in the United States has been different from the history of all other minority groups. Negroes in this country were first enslaved, later segregated by law, and now are segregated and discriminated against by a combination of governmental and private action. They do not reside today in ghettos as the result of an exercise of free choice and the attendance of their children in racially isolated schools is not an accident of fate wholly unconnected with deliberate segregation and other forms of discrimination. In the light of this history, the feelings of stigma generated in Negro children by attendance at racially isolated schools are realistic and cannot easily be overcome.

Barriers to Understanding

Many Americans have sensed the grave injustice that racial isolation inflicts upon Negro children. But the need for a remedy sufficient to meet the injustice perceived has been obscured by the existence of other factors that contribute to educational disadvantage.

Thus, it is said with truth that Negro children often are handicapped in school because they come from poor and ill-educated families. But the conclusion drawn by a few pessimistic educators that the school cannot be expected to deal with these deficits does injustice both to the children involved and to American education. For the very purpose of American public education from Jefferson's time to the present has been to help youngsters surmount the barriers of poverty and limited backgrounds to enable them to develop their talents and to participate fully in society. The tributes accorded to public education stem largely from the fact that it has served this role so successfully for so many Americans—Negroes as well as whites. This record affords ample grounds for hope that education can meet today's challenge of preparing Negro children to participate in American society. Counsels of despair will be in order only if, after having done everything to create the conditions for success, we have failed.

It also is said with truth that disadvantaged Negro youngsters are in need of special attention, smaller classes, a better quality of instruction, and teachers better prepared to understand and set high standards for them. But the suggestion that this is all that is needed finds little support in our experience to date with efforts to provide compensatory education. The weakest link in these efforts appears to be those programs which attempt to instill in a child feelings of personal worth and dignity in an environment in which he is surrounded by visible evidence which seems to deny his value as a person. This does not appear to be a problem which will yield easily to additional infusions of money. More funds clearly are required and investments in programs that will improve teaching and permit more attention to the individual needs of students undoubtedly will benefit many children. The evidence suggests, however, that the better services additional funds will provide will not be fully effective in a racially isolated environment, but only in a setting which supports the teacher's effort to help each child to understand that he is a valuable person who can succeed.

Finally, it is held often that the problem of educational disadvantage is one of class, not race. And it is true that an important key to providing good education for disadvantaged youngsters lies in affording them the opportunity to attend school with children who, by reason of their parents' education and income, have a genuine headstart. Children benefit from association in schools with others more advantaged than they and from a classroom environment which permits the establishment of high standards toward which they must strive. But, as a practical matter, the relatively small numbers of middle-class Negro children in the public schools means that it will be possible to provide social class integration only by providing racial integration. And even if social class integration could be accomplished without racial integration, the remedy would be partial and inadequate, for children would still be attending schools stigmatized because of race.

Thus, the complexity of the problem of educational disadvantage should not be allowed to obscure the central fact—that racial isolation is the heart of the matter and that enduring solutions will not be possible until we deal with it.

Barriers to Remedy

More fundamental perhaps than the difficulties of understanding the problem of racial isolation is the belief held by many Americans that solutions will require both change and sacrifice.

Change certainly will be required. As our cities have grown, increasing distances, physical and psychological, have separated the affluent majority from disadvantaged minorities. We have followed practices which exclude racial and economic minorities from large areas of the city and we have created structures, such as our method of financing education, which, by providing more attractive facilities with less tax effort, tend to attract the affluent to the very areas from which minorities are excluded. And the fact of racial and economical separation itself has generated attitudes which make integration increasingly difficult. The lines of separation are now well established, self-perpetuating, and very difficult to reverse.

Because of the difficulties of effecting change, it has been tempting to think in terms of remedies which will require a minimum of effort on the part of the schools and least disrupt the educational *status quo*. So it has been suggested that the problem of securing equal educational opportunity is really a problem of housing, and that if discrimination in housing can be eliminated it will be possible to desegregate the schools without changing existing school patterns. But such a solution would require vast changes in an area where resistance to change is most entrenched. Laws designed to secure an open market in housing are needed now, but the attitudes fostered in segregated schools and neighborhoods make it unlikely that such legislation will be fully effective for years. To make integrated education dependent upon open housing is to consign at least another generation of children to racially isolated schools and to lengthen the time that will be required to overcome housing discrimination.

Similarly, it has been suggested that if integration were to be sought only at the high school level, it would be accomplished with relative ease and without unduly disturbing existing attendance patterns. But the hard fact is that attitudes toward learning are formed during a child's early years, and it is in this period that the educational process has its greatest impact, positive or negative. Remedies that are not instituted until children reach high school are those least likely to be successful.

Thus, it appears that meaningful remedy will require an alteration of the *status quo;* but in a changing world, change is hardly to be resisted for its own sake, particularly when it is designed to create a more just society. A more substantial question for many white American parents is whether what is required to right a wrong this Nation has inflicted upon Negro children will impair the interests of their children.

It is relevant to begin such an inquiry by asking whether the racially isolated education most white children receive now causes them any injury. There is evidence in this report which suggests that children educated in all-white institutions are more likely than others to develop racial fears and prejudices based upon lack of contact and information. Although it cannot be documented in traditional ways, we believe that white children are deprived of something of value when they grow up in isolation from children of other races, when their self-esteem and assurance may rest in part upon false notions of racial superiority, when they are not prepared by their school experience to participate fully in a world rich in human diversity. These losses, although not as tangible as those which racial isolation inflicts upon Negro youngsters, are real enough to deserve the attention of parents concerned about their children's development.

Unfortunately, they do not seem as real to many parents as the feared consequences of integration. The fears most frequently articulated are that integration will destroy the concept of neighborhood schools and will require the busing of children over long distances. The values of neighborhood and proximity, of course, are relative. In today's world, all of us, adults and children, are residents of many neighborhoods and communities, large and small. We do not hesitate to bus our children long distances in rural areas, or, in cities, to private schools or to other schools offering special advantages. Thus, the issue is not whether small neighborhood schools are good or busing bad, *per se,* but whether the interests of our children will be served or impaired by particular proposals or solutions. Will our children be held back by being placed in classes with children of other, less advantaged backgrounds? Will the education provided at the end of a trip be as good as, or better than, the education our children presently receive?

Most often these issues have been debated in the context of the inner-city, in circumstances which have made it easy for fears to be magnified and exaggerated. The image conjured up in the minds of many parents has been one in which their children are cross-bused to ghetto schools and taught in classrooms populated by large numbers of disadvantaged children and lacking in essential services. Moreover, ethnic and class tensions have been aroused by proposals for partial solutions which appear to place more responsibilities upon less affluent whites than upon those who are better off.

The fundamental answer to these fears is that solutions sought must be those that will not only remedy injustice, but improve the quality of education for all children. The Commission has been convinced, both by practical demonstrations and by sound proposals, that such solutions are available.

While public attention has been focused upon the more dramatic controversies, many small cities and suburban communities in the Nation have quietly integrated their schools. By a variety of techniques these communities have achieved their goal by substituting community schools for those serving smaller neighborhoods. In most cases the issue has been approached calmly and compassionately, with a view toward improving the quality of education for all children. Steps have been taken to maintain and improve educational standards, to avoid the possibility of interracial frictions, and to provide remedial services for children who need them. And, in most cases, the conclusion has been that advantaged children have not suffered from educational exposure to others not as well off, and that the results have been of benefit to all children, white and Negro alike.

In larger cities, while efforts to achieve integration have been fragmentary and in many cases more recent, the results generally have been the same. The most recent efforts, admittedly embryonic, involving cooperation between suburban and city school districts in metropolitan areas have met with favorable reactions from those involved. Negro parents have reported that the values of better education have not been diminished by the bus trips necessary to obtain it. White parents have reported that their children have benefited from the experience. And administrators and teachers have described the educational results as positive.

Fears of the unknown, therefore, are being refuted by practical experience. Efforts to achieve integration by establishing schools serving a wider community clearly will be more difficult and costly in large cities than in smaller cities and suburban communities, but there is every indication that they will yield beneficial results.

Equally as important, the establishment of schools serving larger student populations is consistent with what leading educators believe is necessary to improve the quality of education for all Americans. Education which meets the needs of a technological society requires costly equipment which cannot be provided economically in schools which serve small numbers of students. Further, educators have concluded that larger facilities will provide more scope for innovation and individual initiative in the development of curriculum and teaching techniques. Efforts to stimulate such initiative in small school units have been frustrated by lack of available resources.

At the same time, educators have concluded that in larger facilities techniques would be available to teachers which would permit them to give more attention to the individual needs of children. It has been pointed out, for example, that the present rigid system of classifying and teaching students by grades, with the limited options of promoting or keeping a child back, does not permit the full development of each individual child's abilities. The availability of more flexible classroom space would make possible the utilization of nongraded classes and team teaching in ways which would allow for greater attention to the individual needs and capabilities of students. Although the development of computer technology is at a very early stage, there is evidence to suggest that it too may become a valuable aid to teachers in meeting the needs of individual children. Thus, the development of new schools serving larger populations would make possible the use of techniques and instruments that would improve the quality of education for all students. They hold forth the promise that means can be devised to assure that the advancement of a child is not held back by the capabilities of any of his classmates—advantaged or disadvantaged.

Thus, although many would argue that a wrong which we as a Nation have inflicted upon Negro children must be righted even if it required real sacrifice, it is not necessary to face this dilemma. The goals of providing equal educational opportunity for Negro Americans and quality education for all children are consistent and the measures which will produce both in many respects are identical. The only sacrifice required is that of our resources and energies in securing these goals.

The Commission has approached the question of remedy with the belief that it would be unwise, if not impossible, to prescribe uniform solutions for the Nation. We believe that there is an evil which must be corrected. We believe that the Federal Government has the authority, the responsibility, and the means to assure that it is corrected. We have satisfied ourselves that remedies are available which will provide better education for all American children and we believe that there are people in all sections of the Nation with enough wisdom and ingenuity to devise solutions appropriate to the particular needs of each area. The remaining question is whether this Nation retains the will to secure equal justice and to build a better society for all citizens. The Commission issues this report in the knowledge that this Nation has dedicated itself to great tasks before, and with the faith that it is prepared to do so again.

Findings

Racial Isolation: Extent and Context

Extent

1. Racial isolation in the public schools is intense throughout the United States. In the Nation's metropolitan areas, where two-thirds of both the Negro and white population now live, it is most severe. Seventy-five percent of the Negro elementary students in the Nation's cities are in schools with enrollments that are nearly all-Negro (90 percent or more Negro), while 83 percent of the white students are in nearly all-white schools. Nearly nine of every 10 Negro elementary students in the cities attend majority-Negro schools.

2. This high level of racial separation in city schools exists whether the city is large or small, whether the proportion of Negro enrollment is large or small, and whether the city is located North or South.

Trends

3. Racial isolation in the public schools has been increasing. Over recent years Negro elementary school enrollment in northern city school systems has increased, as have the number and proportion of Negro elementary students in majority-Negro and nearly all-Negro schools. Most of this increase has been absorbed in schools which are now more than 90 percent Negro, and almost the entire increase in schools which are now majority-Negro. There is evidence to suggest that once a school becomes almost half- or majority-Negro, it tends rapidly to become nearly all-Negro.

4. In Southern and border cities, although the proportion of Negroes in all-Negro schools has decreased since the 1954 Supreme Court decision in *Brown* v. *Board of Education,* a rising Negro enrollment, combined with only slight desegregation, has produced a substantial increase in the number of Negroes attending nearly all-Negro schools.

Population Movements in Metropolitan Areas

5. The Nation's metropolitan area populations are growing and are becoming increasingly separated by race. Between 1940 and 1960, the increase of Negroes in metropolitan areas occurred mainly in the central cities while the white increase occurred mainly in the suburbs. These trends are continuing.

6. The trends are reflected among school-age children.

(*a*) By 1960, four of every five nonwhite school-age children in metropolitan areas lived in central cities while nearly three of every five white children lived in the suburbs.

(*b*) Negro schoolchildren in metropolitan areas increasingly are attending central city schools and white children, suburban schools.

(*c*) A substantial number of major cities have elementary school enrollments that are more than half-Negro.

Causes of Racial Isolation

Metropolitan Dimensions

1. The Nation's metropolitan area populations also are becoming increasingly separated socially and economically. There are widening disparities in income and educational level between families in the cities and families in the suburbs. People who live in the suburbs increasingly are more wealthy and better educated than people who live in the cities.

2. The increasing racial, social, and economic separation is reflected in the schools. School districts in metropolitan areas generally do not encompass both central city and suburban residents. Thus, central city and suburban school districts, like the cities and suburbs themselves, enclose separate racial, economic, and social groups.

3. Racial, social, and economic separation between city and suburb is attributable in large part to housing policies and practices of both private industry and government at all levels.

(*a*) The practices of the private housing industry have been discriminatory and the housing produced in the suburbs generally has been at prices only the relatively affluent can afford.

(*b*) Local governments in suburban areas share the responsibility for residential segregation. Residential segregation has been established through such means as racially restrictive zoning ordinances, racially restrictive covenants capable of judicial enforcement, administrative determinations on building permits, inspection standards and location of sewer and water facilities, and use of the power of eminent domain, suburban zoning, and land use requirements to keep Negroes from entering all-white communities.

(*c*) Federal housing policy has contributed to racial segregation in metropolitan areas through past discriminatory practices. Present nondiscrimination policies and laws are insufficient to counteract the effects of past policy.

(*d*) Laws and policies governing low- and moderate-income housing programs, including public housing, the FHA 221(d)(3) program, and the rent supplement program, serve to confine the poor and the nonwhite to the central city. Under each of these programs, suburban jurisdictions hold a special veto power.

4. Racial and economic isolation between city and suburban school systems is reinforced by disparities of wealth between cities and suburbs and the manner in which schools are financed.

(*a*) Schools are financed by property tax levies which make education dependent on the wealth of the community.

(*b*) Suburbs with increasing industry and increasing numbers of affluent people have a large tax base and are able to finance their schools with less effort.

(*c*) Cities with shrinking industry, a disproportionate share of the poor, and increasing costs for non-educational services to both residents and nonresidents, are less able to provide the required revenue for schools.

(*d*) State educational aid for schools, though designed to equalize, often does not succeed in closing the gap between city and suburban school districts.

(*e*) Federal aid at present levels in most instances is insufficient to close the gap between central city school districts and those of more affluent suburbs.

(*f*) These disparities provide further inducement to many white families to leave the city.

Racial Isolation and the Central City

5. Within cities, as within metropolitan areas, there is a high degree of residential segregation—reflected in the schools—for which responsibility is shared by both the private housing industry and government.

(*a*) The discriminatory practices of city landlords, lending institutions, and real estate brokers have contributed to the residential confinement of Negroes.

(*b*) State and local governments have contributed to the pattern of increasing residential segregation through such past discriminatory practices as racial zoning ordinances and racially restrictive covenants capable of judicial enforcement. Current practices in such matters as the location of low-rent public housing projects, and the displacement of large numbers of low-income nonwhite families through local improvement programs also are intensifying residential segregation.

(*c*) Federal housing programs and policies serve to intensify racial concentrations in cities. Federal policies governing low- and moderate-income housing programs such as low-rent public housing and FHA 221(d)(3) do not promote the location of housing outside areas of intense racial concentration. Federal urban renewal policy is insufficiently concerned with the impact of relocation on racial concentrations within cities.

6. Individual choice contributes to the maintenance of residential segregation, although the impact of such choice is difficult to assess since the housing market has been restricted.

7. In all central cities, as compared to their suburbs, nonpublic schools absorb a disproportionately large segment of the white school population; nonwhites, however, whether in city or suburbs, attend public schools almost exclusively.

Educational Policies and Practices

8. The policies and practices of city school systems have a marked impact on the racial composition of schools.

(*a*) Geographical zoning, the most commonly used form of student assignment in northern cities, has contributed to the creation and maintenance of racially and socially homogeneous schools.

(*b*) School authorities exercise broad discretion in determining school attendance areas, which in most communities are not prescribed by reference to well-defined neighborhoods or by specific guidelines based on the optimum size of schools.

(*c*) In determining such discretionary matters as the location and size of schools, and the boundaries of attendance areas, the decisions of school officials may serve either to intensify or reduce racial concentrations. Although there have been only a few instances where purposeful segregation has been judicially determined to exist in the North, apparently neutral decisions by school officials in these areas frequently have had the effect of reinforcing racial separation of students.

(*d*) In Southern and border cities, similar decisions of school officials, combined with a high degree of residential racial concentration and remnants of legally compelled segregation, have had the effect of perpetuating racial isolation in the schools.

Racial Isolation and the Outcomes of Education

1. There are marked disparities in the outcomes of education for Negro and white Americans. Negro students typically do not achieve as well in school as white students. The longer they are in school the

further they fall behind. Negroes are enrolled less often in college than whites and are much more likely to attend high schools which send a relatively small proportion of their graduates to college. Negroes with college education are less likely than similarly educated whites to be employed in white-collar trades. Negroes with college education earn less on the average than high-school educated whites. These disparities result, in part, from factors that influence the achievement, aspirations, and attitudes of school children.

2. There is a strong relationship between the achievement and attitudes of a school child and the economic circumstances and educational background of his family. Relevant factors that contribute to this relationship include the material deprivation and inadequate health care that children from backgrounds of poverty often experience, the fact that disadvantaged children frequently have less facility in verbal and written communication—the chief vehicle by which schools measure student achievement—and the inability of parents in poor neighborhoods to become as involved in school affairs and affect school policy as much as more affluent parents.

3. The social class of a student's schoolmates—as measured by the economic circumstances and educational background of their families—also strongly influences his achievement and attitudes. Regardless of his own family background, an individual student achieves better in schools where most of his fellow students are from advantaged backgrounds than in schools where most of his fellow students are from disadvantaged backgrounds. The relationship between a student's achievement and the social class composition of his school grows stronger as the student progresses through school.

4. Negro students are much more likely than white students to attend schools in which a majority of the students are disadvantaged. The social class composition of the schools is more important to the achievement and attitudes of Negro students than whites.

5. There are noticeable differences in the quality of schools which Negroes attend and those which whites attend. Negro students are less likely than whites to attend schools that have well-stocked libraries. Negro students also are less likely to attend schools which offer advanced courses in subjects such as science and languages and are more likely to be in overcrowded schools than white students. There is some relationship between such disparities and the achievement of Negro students.

6. The quality of teaching has an important influence on the achievement of students, both advantaged and disadvantaged. Negro students are more likely than white students to have teachers with low verbal achievement, to have substitute teachers, and to have teachers who are dissatisfied with their school assignment.

7. The relationship between the quality of teaching and the achievement of Negro students generally is greater in majority-Negro schools

than in majority-white schools. Negro students in majority-white schools with poorer teachers generally achieve better than similar Negro students in majority-Negro schools with better teachers.

8. There is also a relationship between the racial composition of schools and the achievement and attitudes of most Negro students, which exists when all other factors are taken into account.

(*a*) Disadvantaged Negro students in school with a majority of equally disadvantaged white students achieve better than Negro students in school with a majority of equally disadvantaged Negro students.

(*b*) Differences are even greater when disadvantaged Negro students in school with a majority of disadvantaged Negro students are compared with similarly disadvantaged Negro students in school with a majority of advantaged white students. The difference in achievement for 12th-grade students amounts to more than two entire grade levels.

(*c*) Negroes in predominantly Negro schools tend to have lower educational aspirations and more frequently express a sense of inability to influence their futures by their own choices than Negro students with similar backgrounds attending majority-white schools. Their fellow students are less likely to offer academic stimulation.

(*d*) Predominantly Negro schools generally are regarded by the community as inferior institutions. Negro students in such schools are sensitive to such views and often come to share them. Teachers and administrative staff frequently recognize or share the community's view and communicate it to the students. This stigma affects the achievement and attitudes of Negro students.

9. The effects of racial composition of schools are cumulative. The longer Negro students are in desegregated schools, the better is their academic achievement and their attitudes. Conversely, there is a growing deficit for Negroes who remain in racially isolated schools.

10. Racial isolation in school limits job opportunities for Negroes. In general, Negro adults who attended desegregated schools tend to have higher incomes and more often fill white-collar jobs than Negro adults who went to racially isolated schools.

11. Racial isolation is self-perpetuating. School attendance in racial isolation generates attitudes on the part of both Negroes and whites which tend to alienate them from members of the other race. These attitudes are reflected in behavior. Negroes who attended majority-white schools are more likely to reside in interracial neighborhoods, to have children in majority-white schools, and to have white friends. Similarly, white persons who attended school with Negroes are more likely to live in an interracial neighborhood, to have children who attend school with Negroes, and to have Negro friends.

Remedy

Compensatory Programs in Isolated Schools

1. Evaluations of programs of compensatory education conducted in schools that are isolated by race and social class suggest that these programs have not had lasting effects in improving the achievement of the students. The evidence indicates that Negro children attending desegregated schools that do not have compensatory education programs perform better than Negro children in racially isolated schools with such programs.

2. Compensatory education programs have been of limited effectiveness because they have attempted to solve problems that stem, in large part, from racial and social class isolation in schools which themselves are isolated by race and social class.

3. Large-scale increases in expenditures for remedial techniques, such as those used in preschool projects funded under the Head Start Program, which improve teaching and permit more attention to the individual needs of children, undoubtedly would be helpful to many students, although it is uncertain that they could overcome the problems of racial and social class isolation.

4. Compensatory education programs on the present scale are unlikely to improve significantly the achievement of Negro students isolated by race and social class.

Desegregation

5. Several small cities and suburban communities have desegregated their schools effectively. Although a variety of techniques have been used in these communities, a major part of each plan has been the enlargement of attendance areas. Desegregation generally has been accepted as successful by these communities.

6. Factors contributing to successful school desegregation include the exercise of strong leadership by State and local officials to help implement desegregation, the involvement of all schools in the community, the desegregation of classes within desegregated schools, steps to avoid the possibility of interracial friction, and the provision of remedial assistance to children who need it. The available evidence suggests that the aca-

demic achievement of white students in desegregated classrooms generally does not suffer by comparison with the achievement of such students in all-white classrooms. Steps have been taken in communities that have desegregated their schools successfully to maintain or improve educational standards. There is also evidence that non-academic benefits accrue to white students who attend desegregated schools.

7. The techniques employed by large city school systems generally have not produced any substantial school desegregation.

(*a*) Techniques such as open enrollment which do not involve the alteration of attendance areas have not produced significant school desegregation. The effectiveness of open enrollment is limited significantly by the availability of space in majority-white schools and the requirement in many cases that parents initiate transfer requests and pay transportation costs. Open enrollment also does not result in desegregation of majority-Negro schools.

(*b*) Other techniques which do involve the alteration of attendance areas, such as school pairing, have not been as successful in producing desegregation in large cities as in smaller cities.

8. The large proportion of Negro children in many central city school systems makes effective desegregation possible only with the cooperation of suburban school systems.

9. Programs involving urban-suburban cooperation in the desegregation of schools, while only beginning and presently very limited, show promise as techniques for desegregating the schools in the Nation's larger metropolitan areas.

10. In large cities, promising proposals have been developed which seek to desegregate schools by broadening attendance areas so that school populations will be more representative of the community as a whole and to improve the quality of education by providing additional resources and innovations in the educational program.

(*a*) Proposals for educational facilities such as supplementary education centers and magnet schools, which contemplate a system of specialized school programs located either in existing schools or in new facilities, and education complexes, which would consist of clusters of existing schools reorganized to provide centralized services for schoolchildren in an enlarged attendance area, would contribute to improving the quality of education and would provide some progress in school desegregation.

(*b*) Proposals for education parks, designed to improve the quality of education and desegregate the schools by providing new centralized school facilities serving a range of grade levels in a single campus, are most promising. Such parks could contribute to improving the quality of education by permitting advances and innovations in educational techniques not possible in smaller schools and could facilitate desegregation by enlarging attendance areas, in some cases to draw students both from the central city and the suburbs. Although legitimate concerns have been raised about the size and complexity of education parks, the new and flexible approaches to teaching and learning they would make possible could provide greater individual attention for each child's needs than is now possible in smaller schools. Additional problems relating to the cost and feasibility of education parks can be met in some measure by the economies which are made possible by the consolidation of resources in larger facilities. Although education parks would require a substantial new investment, it is within the range of what is feasible if the costs are shared by the Federal, State, and local governments.

Racial Isolation: The Role of the Law

1. Purposeful school segregation—violative of the Constitution—has occurred in Northern cities.

2. It remains an open question whether school segregation which is not imposed by purposeful action of school authorities violates the Constitution. The Supreme Court of the United States has not resolved the issue.

3. The courts consistently have upheld State or local action to eliminate or alleviate racial isolation in the public schools against the charge that it is unconstitutional to consider race in formulating school board policies. Only a few States have taken any action to require local school authorities to remedy racial isolation in their schools.

4. Congress has passed legislation aimed at eliminating racial discrimination in the assignment of children to public schools, but this legislation does not appear to dictate the application of sanctions not involving purposeful discrimination.

5. Congress has the power to enact legislation to remedy the inequality of educational opportunity to which Negro students are subjected by being assigned to racially isolated schools.

6. Congress, with its ability to appropriate funds, is the branch of Government best able to assure quality education and equal educational opportunity.

Recommendations

This report describes conditions that result in injustices to children and require immediate attention and action. The responsibilty for corrective action rests with government at all levels and with citizens and organizations throughout the Nation. We must commit ourselves as a Nation to the establishment of equal educational opportunity of high quality for all children. ***As an important means of fulfilling this national goal, the Commission recommends that the President and the Congress give immediate and urgent consideration to new legislation for the purpose of removing present racial imbalances from our public schools, thus to eliminate the dire effects of racial isolation which this report describes, and at long last, providing real equality of educational opportunity by integrating presently deprived American children of all races into a totally improved public educational system.***

Without attempting to outline needed legislation in great detail, our study of the problem convinces the Commission that new legislation must embody the following essential principles:

1. ***Congress should establish a uniform standard providing for the elimination of racial isolation in the schools.***

Since large numbers of Negro children suffer harmful effects that are attributable in part to the racial composition of schools they attend, legislation should provide for the elimination of schools in which such harm generally occurs. No standard of general applicability will fit every case precisely; some schools with a large proportion of Negro students may not in fact produce harmful effects while others with a smaller proportion may be schools in which students are disadvantaged because of their race. But the alternative to establishing such a standard is to require a time-consuming and ineffective effort to determine on a case-by-case basis the schools in which harm occurs. As it has in analogous situations, Congress should deal with this problem by establishing reasonable and practical standards which will correct the injustice without intruding unnecessarily into areas where no corrective action is needed.

In prescribing a reasonable standard, there is much to commend the criterion already adopted by the legislature in Massachusetts and the Commissioner of Education of New York, defining as racially imbalanced, schools in which Negro pupils constitute more than 50 percent of the total enrollment. It was found in this report that when Negro students in schools with more than 50 percent Negro enrollment were compared with similarly situated Negro students in schools with a majority-white enrollment, there were significant differences in attitude and performance. It is the schools that have a majority-Negro enrollment that tend to be regarded and treated by the community as segregated and inferior schools. Although there are many factors involved, the racial composition of schools that are majority-Negro in enrollment tends to be less stable than that of majority-white schools and to be subject to more rapid change.

Similar arguments might be advanced for a standard which would deviate slightly from a 50-percent criterion, but a standard set significantly higher would not be adequate to deal with the problem and probably would not result in lasting solutions.

2. ***Congress should vest in each of the 50 States responsibility for meeting the standard it establishes and should allow the States maximum flexibility in devising appropriate remedies. It also should provide financial and technical assistance to the States in planning such remedies.***

It would be unwise for the Federal Government to attempt to prescribe any single solution or set of solutions for the entire Nation. There is a broad range of techniques which are capable of achieving education of high quality in integrated public schools. Each State should be free to adopt solutions best suited to the particular needs of its individual communities.

At the same time it is clear that the responsibility should be placed upon the States rather than the individual school districts. The States, and not individual communities alone, have the capacity to develop and implement plans adequate to the objective. The States have assumed the responsibility for providing public education for all of their citizens and for establishing the basic conditions under which it is offered. Responsibility for achieving the goal of high-quality integrated education can and should be placed upon the States under terms which afford broad scope for local initiative. But in many jurisdictions, particularly the major cities, solutions are not possible without the cooperation of neighboring communities. The States possess the authority and the means for securing cooperation, by consolidating or reorganizing school districts or by providing for appropriate joint arrangements between school districts.

To help the States in devising appropriate remedies, the Federal Government should provide technical and financial assistance.

3. ***The legislation should include programs of substantial financial assistance to provide for construction of new facilities and improvement in the quality of education in all schools.***

In many cases, particularly in the major cities, integrating the public schools will require the construction of new facilities designed both to serve a larger student population and to be accessible to all children in the area to be served. Substantial Federal assistance is needed to supplement the resources of States and localities in building new schools of this kind and providing higher quality education for all children. Federal assistance also can be helpful in encouraging cooperative arrangements between States which provide education services to the same metropolitan area and between separate school districts in a metropolitan area. In addition, Federal financial assistance now available under programs such as aid for mass transportation and community facilities should be utilized in ways which will advance the goal of integration.

Regardless of whether the achievement of integration requires new facilities, Federal financial assistance is needed for programs to improve the quality of education. States and localities should have broad discretion to develop programs best suited to their needs. Programs that are among the most promising involve steps—such as the reduction of pupil-teacher ratios, the establishment of ungraded classes and team teaching, and the introduction of specialized remedial instruction—which enable teachers to give more attention to the individual needs of children. Funds also could be used for purposes such as assisting the training of teachers, developing new educational techniques, and improving curriculum.

4. ***Congress should provide for adequate time in which to accomplish the objectives of the legislation.***

It is clear that equal opportunity in education cannot be achieved overnight. Particularly in the large cities where problems of providing equal educational opportunity have seemed so intractable, time will be necessary for such matters as educational and physical planning, assembling and acquiring land, and building new facilities. However, since the problem is urgent a prompt start must be made toward finding solutions, progress must be continuous and substantial, and there must be some assurance that the job will be completed as quickly as possible. The time has come to put less emphasis on "deliberate" and more on "speed."

* * *

The goals of equal educational opportunity and equal housing opportunity are inseparable. Progress toward the achievement of one goal necessarily will facilitate achievement of the other. Failure to make progress toward the achievement of either goal will handicap efforts to achieve the other. ***The Commission recommends, therefore, that the President and Congress give consideration to legislation which will:***

5. ***Prohibit discrimination in the sale or rental of housing, and***

6. ***Expand programs of Federal assistance designed to increase the supply of housing throughout metropolitan areas within the means of low- and moderate-income families.***

Additional funds should be provided for programs such as the rent supplement program and FHA 221(d)(3), and these two programs should be amended to permit private enterprise to participate in them free from the special veto power now held by local governments under present Federal statutes.

In addition, ***the Commission recommends that the Department of Housing and Urban Development:***

7. ***Require as a condition for approval of applications for low- and moderate-income housing projects that the sites will be selected and the projects planned in a nondiscriminatory manner that will contribute to reducing residential racial concentrations and eliminating racial isolation in the schools.***

8. ***Require as a condition for approval of urban renewal projects that relocation will be planned in a nondiscriminatory manner that will contribute to reducing residential racial concentrations and eliminating racial isolation in the schools.***

Supplementary Statement by Commissioner Freeman

The worsening crisis in our cities is essentially a human crisis. This is a truth we tend to forget because the crisis is so often expressed in abstractions—dwindling tax revenues, housing trends, unemployment rates, statistics on air pollution, or crime and delinquency. Even in this report, which deals with a most fundamental aspect of our current urban dilemma—the crisis in public education—we have had to describe what has been happening in terms of achievement scores, graphs, and figures. But it must never be forgotten that what we have really been looking at is the brutal and unnecessary damage to human lives.

For it is unnecessary at this point in a Nation as affluent as ours that hundreds of thousands of poor children, a disproportionate number of them Negro children, should be isolated in inadequately staffed and equipped slum schools—schools which the community has stigmatized as inferior. And, at the same time, on the other side of the Great Divide which we have too long permitted in public education, the advantaged children—most of them white—attend schools in the suburbs and outlying residential sections of our cities which have a disproportionate share of the best teachers, which offer the most advanced curricula and facilities, and which provide individualized attention of a kind and quality seldom available to the minority poor.

Segregation is a term at which many northerners wince, but for generations of poor Negroes in the North, segregation has been a reality which has hardly been mitigated by legalistic distinctions between *de facto* and *de jure*. Neither the presence of nondiscrimination statutes nor the absence of overtly discriminatory laws has been very effective so far in erasing the barriers between Negro and white, advantaged and disadvantaged, educated and miseducated. Only if this is understood can we also understand why today there are Negro Americans who are saying, in effect: Since we seem to be tending toward public school systems offering a superior quality of education in middle-class and white schools and inferior quality in schools for poor Negro children, why not accept the separation as inevitable and concentrate on attempting to provide superior education in the schools attended by the Negro poor? This question is likely to have a more convincing ring than it otherwise would have because it comes at a time when education is only one of several pressing priorities which command the country's attention, and when there is doubt about the strength of this Nation's commitment to the social changes which simple justice and our national principles demand. To the extent that the civil rights movement of the past several years has produced an impatience with the status quo, an upsurge of self-esteem, and a new assertion of dignity and identity among Negro citizens, it is healthy and long overdue. However, there is little that is healthy and much that is potentially self defeating in the emotionalism and racial bias that seem to motivate a small but vocal minority among those who now argue for "separate-but-equal" school systems.

It is certainly true that in the past a good many Negroes have emerged from segregated schools to earn advanced degrees, to acquire comfortable incomes, and to register achievements which are too seldom recorded in the books with which most American schoolchildren are supplied. But the fact that the barriers imposed by segregation have been overcome by some of the more talented, the more determined, and the more fortunate, would hardly seem to recommend it to thousands of disadvantaged youngsters for whom segregation has already demonstrated its capacity to cripple rather than to challenge. Quite aside from being poor democracy, it would seem to be poor economy, and criminally poor educational policy, to continue to isolate disadvantaged children by race and class when it is the interaction with advantaged children which appears to be the single most effective factor in narrowing the learning gap.

Let us be clear on the issues. The question is not whether in theory or in the abstract Negro schools can be as good as white schools. In a society free from prejudice in which Negroes were full and equal participants, the answer would clearly be "Yes." But we are forced, rather, to ask the harder question, whether in our present society, where Negroes are a minority which has been discriminated against, Negro children can prepare themselves to participate effectively in society if they grow up and go to school in isolation from the majority group. We must also ask whether we can cure the disease of prejudice and prepare all children for life in a multiracial world if white children grow up and go to school in isolation from Negroes.

We are convinced that a great deal more, not less, integration is the wisest course to follow if we are really concerned about the future of American children of all races and classes. As the principal value-bearing institution which at one time or another touches everyone in our society, the school is crucial in determining what kind of country this is to be. If in the future the adults in our society who make decisions about who gets a job, who lives down the block, or the essential worth of another person are to be less likely to make these decisions on the basis of race or class, the present cycle must be broken in classrooms which provide better education than ever, and in which children of diverse backgrounds can come to know one another. None of the financial costs or the administrative adjustments necessary to bring about integrated quality education will be as costly to the quality of American life in the long run as the continuation of our present educational policies and practices. For we are now on a collision course which may produce within our borders two alienated and unequal nations confronting each other across a widening gulf created by a dual educational system based upon income and race. Our present school crisis is a human crisis, engendered and sustained in large part by the actions, the apathy, or the shortsightedness of public officials and private individuals. It can be resolved only by the commitment, the creative energies, and the combined resources of concerned Americans at every level of public and private life.

Commissioner Hesburgh concurs in this statement.

Supplementary Statement by Commissioner Hesburgh

Because of the national importance of the educational situation described in this report and the large number of students in private elementary and secondary educational institutions, it would seem most important to me, speaking as an individual member of this Commission, that those involved in all of the private elementary and secondary educational endeavors in this country study the full implications of this report and consider most seriously what their institutions might contribute to the ultimate solution of this pressing problem.

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Legal Appendix

RACIAL ISOLATION: THE ROLE OF LAW

This report has explored the causes of racial isolation in the public schools, the attendant damage to Negro children, and remedies attempted by particular school systems. This appendix discusses the role of law—judicial decisions in cases challenging both racial isolation in the schools and efforts by State and local authorities to correct it; State legislation and administrative action to overcome racial isolation, and the role of the Federal Government.

I. The Constitutional Duty of a State To Eliminate Racial Isolation—the Judicial Decisions

In *Brown* v. *Board of Education*,[1] the Supreme Court struck down as repugnant to the equal protection clause of the 14th amendment school segregation imposed or expressly permitted by State statutes. The immediate thrust of *Brown* was limited to formal segregation in 17 Southern and Border States. The *Brown* decision did not specifically resolve the questions (1) whether the equal protection clause invalidates school segregation not sanctioned by law, but imposed by purposefully discriminatory administrative actions of school officials, and (2) if so, whether the fact that segregation is less than total robs a school of its "segregated" character. And it left open the question whether the equal protection clause condemns "adventitious" school segregation; i.e., segregation which is not shown to be the result of purposeful discrimination by school authorities.

A. School Segregation Resulting From Purposely Discriminatory Actions of School Officials

Cases decided after *Brown* both in the South and in the North establish that purposeful school segregation by school authorities contravenes the equal protection clause, and that segregation need not be total to be unconstitutional under this principle. One of these cases was *Clemons* v. *Board of Education*.[2] In Hillsboro, Ohio, even though racially separate schools were forbidden by State law, separate schools for Negroes and whites had been maintained on an informal basis, without any geographical districting system. Two of the town's elementary schools were attended by whites and the third by Negroes. This informal arrangement was disturbed on September 7, 1954, when seven Negro children were registered in the white schools. The schools then were closed for several days, the school board created the town's first geographic attendance areas, and, when schools reopened on September 14, the seven Negro children had been reassigned to Lincoln, the all-Negro school. The attendance area for Lincoln consisted of two separated noncontiguous sections, and the school itself was not located in its own attendance area. Several Negro students had to walk by a white school on their way to Lincoln. A Federal district court found that the zoning was "a subterfuge to permit the continuance of Lincoln school for Negro children exclusively," but refused to interfere with what it deemed to be the discretionary powers of the board.[3] The Court of Appeals for the Sixth Circuit ruled that the racial gerrymandering was in conflict with *Brown* and in violation of the 14th amendment, and directed the lower court to afford appropriate relief.

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[1] 347 U.S. 483 (1954).

[2] 228 F. 2d 853 (6th Cir.), cert. denied, 350 U.S. 1006 (1956).

[3] *Id.* at 856.

In *Henry* v. *Godsell*,[4] a Negro minor assigned to a school in an area occupied almost exclusively by Negroes challenged the assignment on the ground that the school board had selected the site for the purpose of segregating Negro students. A Michigan Federal court dismissed her suit, but only after finding that the board had acted in good faith and that its policies "were not motivated by racial considerations."[5] The court said that "the fact that in a given area a school is populated almost exclusively by the children of a given race is not in itself evidence of discrimination. The choice of a school site based on density of population and geographical considerations such as distance, accessibility, ease of transportation, and other safety considerations, is a permissible exercise of administrative discretion."[6]

Subsequent to the *Henry* decision, the Supreme Court decided *Cooper* v. *Aaron*[7] which stressed that "the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by State legislators or State executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted ingeniously or ingenuously."[8] Three years later, a Federal district court in New York decided *Taylor* v. *Board of Education*.[9] In *Taylor*, the court found that in 1930 the New Rochelle Board of Education had gerrymandered the attendance areas of the predominantly Negro Lincoln Elementary School. An all-white irregular corridor had been carved out of the Lincoln zone and placed in an adjacent all-white zone. "It was testified that the purpose of this gerrymandering was to confine Negro pupils within the Lincoln district, while allowing whites living in the same area to attend a school which was not predominantly Negro in composition."[10] In ensuing years, as the Negro population expanded, the Lincoln lines were extended to contain the Negro population.[11] The school board offered no evidence to refute the evidence of gerrymandering.

The board argued that the Lincoln School was not a component of a dual system such as that condemned in *Brown* since the school was 94 percent Negro and not 100 percent. This argument, the Court said, misconstrued the underlying premise of *Brown*: "That opinion, while dealing with a state-maintained dual system of education, was premised on the factual conclusion that a segregated education created and maintained by official acts had a detrimental and deleterious effect on the educational and mental development of the minority group children."[12] There was no difference, the Court held, "between segregation established by the formality of a dual system of education, as in *Brown,* and that created by gerrymandering of school district lines and transferring of white children as in the instant case."[13] The *Taylor* Court noted that the *Sealy* and *Henry* cases imply their converse: "[I]f a Board of Education selects a school site, or otherwise operates its schools, with a purposeful desire to segregate, or to maintain segregation, the Constitution has been violated."[14] The fact that Lincoln School was 6 percent white, said the Court, did not divest it of its segregated character.[15]

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[4] 165 F. Supp. 87 (E.D. Mich. 1958).

[5] *Id.* at 91.

[6] *Id.* at 90. In *Sealy* v. *Department of Public Instruction*, 159 F. Supp. 561 (E.D. Pa. 1957), aff'd, 252 F. 2d 898 (3d Cir.), cert. denied, 356 U.S. 975 (1958), Negro plaintiffs attacked the selection of a site for the sole junior high school in the township on the ground that, with intent to discriminate against Negro residents, it was located in the predominantly white upper section of the township, requiring Negro pupils to travel more than two miles by bus to attend. The court denied an injunction, but only after a specific finding of lack of intent to discriminate.

In several cases involving attacks on southern school segregation, the courts have recognized that site selection may be used to perpetuate segregation and have issued injunctions broad enough to reach such conduct specifically. See *Board of Public Instruction of Duval County* v. *Braxton*, 326 F. 2d 616 (5th Cir.), cert. denied 377 U.S. 924 (1964) where the Fifth Circuit affirmed a Federal district court decree enjoining "construction programs . . . designed to perpetuate, maintain, or support a school system operated on a racially segregated basis"; *Carson* v. *Board of Education* (Monroe County), Civil No. 5069, E.D. Tenn., June 8, 1965, 10 *Race Rel. L. Rep.* 1640, 1642 (1965), where a Federal district court entered a decree stipulating that "race shall be eliminated as a factor in . . . the construction or geographical location of new schools or addition to schools . . .", and *Wheeler* v. *Durham City Board of Education*, 346 F. 2d 768 (4th Cir. 1965), where the court, noting that the court below had received the "assurance of the [school] board that its construction program would not be designated to perpetuate, maintain, or support segregation" (*Id.* at 774), denied a request for an injunction prohibiting the board from spending the proceeds of a bond issue for such a purpose.

[7] 358 U.S. 1 (1958).

[8] *Id.* at 17.

[9] 191 F. Supp. 181 (S.D. N.Y. 1961).

[10] *Id.* at 185.

[11] *Ibid.*

Subsequently, in *Jackson* v. *Pasadena City School District,*[16] the Supreme Court of California ruled that a lower court improperly had dismissed a complaint containing allegations that an attendance zone had been racially gerrymandered. The court noted that "the general powers of the board with respect to attendance zones are subject to the constitutional guaranteis [sic] of equal protection and due process."[17] Consistently with the Federal court in *Taylor,* the court also observed that "it is not decisive that absolute segregation is not present. Improper discrimination may exist notwithstanding attendance by some white children at a predominantly Negro school or attendance by some Negro children at a predominantly white school."[18]

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[12] *Id.* at 192.

[13] *Ibid.*

[14] *Id.* at 194. In *Gomillion* v. *Lightfoot,* 364 U.S. (1960), it was alleged that the Alabama Legislature had gerrymandered the boundaries of the city of Tuskeegee so as to disfranchise Negro voters. The defendants cited the State's power "to establish, destroy, or reorganize by contraction or expansion its political subdivisions, to wit, cities, counties, and other local units." But the Court, refusing "to exalt this power into an absolute" said: "When a State exercises power wholly within the domain of State interest, it is insulated from Federal judicial review. But such insulation is not carried over when State power is used as an instrument for circumventing a federally protected right" (*Id.* at 346).

[15] The decision was affirmed by the Court of Appeals for the Second Circuit (294 F. 2d 36 (2d Cir. 1961)), which said: "In short, race was made the basis for school districting, with the purpose and effect of producing a substantially segregated school. This conduct clearly violates the Fourteenth Amendment and the Supreme Court decision in *Brown* v. *Board of Education of Topeka. . .*" (*Id.* at 39). The Supreme Court denied a writ of certiorari (368 U.S. 940 (1961)).

In *Wheeler* v. *Durham City Board of Education,* 346 F. 2d 768 (4th Cir. 1965), the Court of Appeals agreed with the District Court's disapproval of a desegregation plan on the ground that "in some instances [the boundaries] have been drawn along racial residence lines, rather than along natural boundaries or the perimeters of compact areas surrounding the particular school." (*Id.* at 771.)

In *Evans* v. *Buchanan,* 207 F. Supp. 820 (D. Del. 1962), the court held that a presumption of unconstitutionality arose from facts showing that Negro children attended an all-Negro school staffed with an all-Negro faculty and administered by a separate board of trustees; and that the attendance area for this school was surrounded entirely by predominantly white attendance areas.

In *Northcross* v. *Board of Education,* 333 F. 2d 661, 663 (6th Cir. 1964), the Sixth Circuit found "persuasive evidence . . . tending to show that zoning was accomplished for the purpose of preserving segregation to some extent" in the Memphis, Tenn., school district. The Court held that "where the Board is under compulsion to desegregate the schools [citing *Brown*] . . . drawing zone lines in such a manner as to disturb the people as little as possible. . ." and "preserving school loyalties" are improper criteria in rezoning (*Id.* at 664).

In *Monroe* v. *Board of Commissioners,* 244 F. Supp. 353 (W.D. Tenn. 1965), a district court in the Sixth Circuit found that boundaries of elementary school attendance areas in Jackson, Tenn., had been gerrymandered racially (*Id.* at 360). The Court applied what it considered to be the *Northcross* standard, that the question of gerrymandering "should be determined primarily by consideration of the utilization of buildings, proximity of pupils to the schools, and natural boundaries" (*Id.* at 361).

[16] 31 Cal. Rptr. 606, 382 P. 2d 878 (1963).

[17] *Id.* at 608, 383 P. 2d at 880.

[18] *Id.* at 609, 382 P. 2d 881.

Again, in *Webb* v. *Board of Education* (Chicago),[19] where the plaintiffs sought a preliminary injunction against the maintenance of racially segregated public schools, the court recognized that there would be a basis for equitable relief if "an intentional design on Defendants' behalf to maintain segregation in the public schools" [20] were shown. The *Webb* case also recognized that intentional discrimination may consist not only of action, but also of inaction, such as "the passive refusal to redistrict unreasonable boundaries." [21]

To summarize, where an intent on the part of school officials to segregate Negro and white children is shown, the resulting segregation has been held violative of the equal protection clause, notwithstanding the absence of any formal law requiring or permitting such segregation. This principle has been applied even where less than complete segregation has been involved. Intentional segregation is unconstitutional whether accomplished by affirmative action of school authorities or by their inaction.

In many cases, however, the courts have found that the evidence did not sustain the contention that segregation was the result of purposeful discrimination.[22] In the rare case where the facts are clear enough to show deliberate segregation of the Negro school population, Negro plaintiffs have obtained relief within the framework of this legal theory.[23] In a large urban setting, however, it is difficult to find a set pattern sufficiently uncomplicated that the motive emerges with clarity. With the school board necessarily making a great number of decisions—some complex—over the relevant period of time, the search for the real "motive" becomes frustrating. If the school district fails to redraw boundary lines, and absorbs excess capacity in existing classrooms or through use of temporary classrooms on school property or in adjacent rented sites, it may be impossible as a practical matter to disentangle the legal search for motive from the multifaceted issues of educational administration which faced the school board. The real issue may be the extent to which the school board is willing to permit other considerations to override a claim for desegregation.[24] Thus, it has been argued that adventitious school segregation—not shown to be purposefully discriminatory—itself is in violation of the Constitution.

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[19] 223 F. Supp. 466 (N.D. Ill. 1963).

[20] *Id.* at 468.

[21] *Id.* at 469. See generally *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *United States* v. *United States Klans*, 194 F. Supp. 897, 902 (M.D. Ala. 1961); *Lynch* v. *United States*, 189 F. 2d 476 (5th Cir. 1951), cert. denied, 342 U.S. 831 (1951); *Catlette* v. *United States*, 132 F. 2d 902, 906–907 (4th Cir. 1943); *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, 250 (3d Cir. 1945), cert. denied, 332 U.S. 776 (1947).

[22] Some courts hold that the burden is on the school board to show that the drawing of geographic attendance areas or the selection of a school site was based on valid criteria. *Evans* v. *Buchanan*, 207 F. Supp. at 825; *Northcross* v. *Board of Education* (Memphis), 333 F. 2d at 664; *Wheeler* v. *Durham City Board of Education*, 346 F. 2d at 744. Most courts, however, place the burden on the plaintiffs to show purposeful discrimination. *Bell* v. *School City of Gary*, 213 F. Supp. 819, 826 (N.D. Ind.), aff'd, 324 F. 2d 209 (7th Cir. 1963), cert. denied, 377 U.S. 924 (1964); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 243 F. Supp. 667, 670 (W.D. N.C. 1965), aff'd, Civil No. 10,207, 4th Cir., Oct. 24, 1966; *Downs* v. *Board of Education* (Kansas City), 9 *Race Rel. L. Rep.* 1214 (D. Kan. 1963), aff'd, 336 F. 2d 988, 997 (10th Cir. 1964), cert. denied, 380 U.S. 914 (1965); *Craggett* v. *Board of Education* (Cleveland), 234 F. Supp. 381, 385 (N.D. Ohio 1964); *Deal* v. *Cincinnati Board of Education*, 244 F. Supp. 572, 579 (S.D. Ohio 1965), remanded in part, No. 16863, 6th Cir., Dec. 6, 1966; *Sealy* v. *Department of Public Instruction*, 159 F. Supp. at 565; *Henry* v. *Godsell*, 165 F. Supp. at 92. The issue of who has the burden of proof may determine the success or failure of allegations of discrimination. For cases in which the plaintiffs' proof was held insufficient, see *Swann* v. *Charlotte-Mecklenburg Board of Education, supra; Bell* v. *School City of Gary, supra; Downs* v. *Board of Education* (Kansas City), *supra; Gilliam* v. *School Board* (Hopewell), 345 F. 2d 325 (4th Cir. 1965) vacated and remanded on other grounds, 382 U.S. 103 (1965; *Craggett* v. *Board of Education* (Cleveland), *supra; Sealy* v. *Department of Public Instruction*, 159 F. Supp. 561 (E.D. Pa. 1957), aff'd, 252 F. 989 (3d Cir.), cert. denied, 356 U.S. 975 (1958); *Henry* v. *Godsell*, 165 F. 2d Supp. 87 (E.D. Mich. 1958).

[23] See *Clemons* v. *Board of Education* (Hillsboro), 228 F. 2d 853 (6th Cir.), cert. denied, 350 U.S. 1006 (1956); *Taylor* v. *Board of Education* (New Rochelle), 191 F. Supp. 181 (S.D. N.Y.), aff'd, 294 F. 2d 36 (2d Cir.), cert. denied, 368 U.S. 940 (1961).

B. ADVENTITIOUS SCHOOL SEGREGATION

The issue of whether the equal protection clause forbids adventitious school segregation has been litigated frequently, but remains an open question.[25] The Supreme Court of the United States has not yet confronted it; the lower Federal courts and the State courts are in disagreement.

Most of the Federal courts which have faced the issue have been of the view that the equal protection clause forbids only purposeful segregation and imposes no duty on school officials to correct adventitious segregation. Four courts of appeals (the Fourth, Sixth, Seventh and Tenth) have so held.[26] The Federal courts taking this view have disposed of the question on the hypothesis that it is legally irrelevant whether adventitious school segregation in fact denies Negro students in predominantly Negro schools equal educational opportunity, and have not reached that issue.

The leading case is *Bell* v. *School City of Gary*,[27] where adventitious segregation in the schools of Gary, Ind.—racially imbalanced because of the application of a neighborhood school policy in the context of racially segregated housing patterns—was challenged.[28] The law does not require, said the court, "that a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention . . . to segregate the races, must be . . . abandoned because the resulting effect is to have a racial imbalance in certain schools where the district is populated almost entirely by Negroes or whites." [29] In the course of its opinion, the court noted that although the plaintiffs had argued that there was an affirmative duty to balance the races, "their own evidence . . . [was] that such a task could not be accomplished in the Gary schools." The Seventh Circuit affirmed, agreeing that a school board has no affirmative constitutional duty "to change innocently arrived at school attendance districts by the mere fact that shifts in population either increase or decrease the percentage of either Negro or white pupils."[30] The Supreme Court denied certiorari.[31]

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[24] For example, a school board which decides to build or use mobile classrooms to contain excess-capacity Negro students, rather than transfer some to a white school, may be "honestly" concerned with keeping students assigned near their homes, may be "honestly" reluctant to incur added expenses or risks involved in transportation, and may—if educational achievement at the schools in question is not comparable—be "honestly" reluctant to raise or attempt to solve expected educational problems which would follow such transfers.

[25] The question has been much mooted in legal periodicals. See Wright, "Public School Desegregation: Legal Remedies for De Facto Segregation," 16 W. Res. L. Rev. 478 (1965); Fiss, "Racial Imbalance in the Public Schools; The Constitutional Concepts," 78 Harv. L. Rev. 564 (1965); Kaplan, "Segregation, Litigation and the Schools," 58 Nw. U.L. Rev. 1, 157 (1963), 59 Nw. U.L. Rev. 121 (1964); Carter, "Constitutional Questions," 16 W. Res. L. Rev. 502 (1965); Sedler, "School Segregation in North and West: Legal Aspects," 7 St. Louis U.L.J. 228 (1963); Note, "Duty to Integrate Public Schools? Some Judicial Responses and a Statute," 46 B.U. L. Rev. 45 (1966); Note, "Racial Imbalance in the Public Schools: Constitutional Dimensions and Judicial Response," 18 Vand. L. Rev. 1290 (1965); Note, "Racial Imbalance in the Public Schools—Legislative Motive and the Constitution," 50 Va. L. Rev. 464 (1964); Note, "California Suggests De Facto School Segregation Must End," 16 Stan. L. Rev. 434 (1964).

[26] *Swann* v. *Charlotte-Mecklenburg Board of Education*, Civ. No. 10,207, 4th Cir., Oct. 24, 1966; *Gilliam* v. *School Board* (Hopewell), 345 F. 2d 325 (4th Cir.), vacated and remanded on other grounds, 382 U.S. 103 (1965); *Deal* v. *Cincinnati Board of Education*, No. 16863, 6th Cir., Dec. 6, 1966; *Bell* v. *School City of Gary*, 324 F. 2d 209 (7th Cir. 1963), cert. denied, 377 U.S. 924 (1964); *Downs* v. *Board of Education* (Kansas City), 336 F. 2d 988 (10th Cir. 1964), cert. denied, 380 U.S. 914 (1965).

[27] 213 F. Supp. 819, (N.D. Ind.), aff'd, 324 F. 2d 209 (7th Cir. 1963), cert. denied, 377 U.S. 924 (1964).

[28] During the 1961–62 school year, of the 40 schools, 14 had enrollments 100 percent white, 12 had enrollments 99–100 percent Negro, and 5 had enrollments 77–95 percent Negro (213 F. Supp. at 820).

[29] *Id.* at 829.

Two other courts of appeals (the Third[32] and the Fifth[33]) have stated or implied by way of dictum that the Constitution lays no duty on school officials to integrate the public schools. Another circuit (the First), while bypassing the basic question whether the State has any affirmative duty, has stated that if an affirmative duty exists, it is a limited one, requiring only that school officials take integration into account along with other educationally relevant factors (including the neighborhood school policy) in making administrative decisions.[34]

No court of appeals has yet held that a northern school system has a constitutional obligation to end adventitious segregation. One court of appeals (the Third), in a case involving the Negro school children of Delaware presenting the question whether a school board adequately had desegregated from a dual biracial system, has said that in *Brown* "the Supreme Court has unqualifiedly declared *integration* to be their constitutional right."[35] This dictum—which once stood unique among interpretations of *Brown*—conflicted with the general view of the demands made by *Brown* upon

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[30] 324 F. 2d at 213.

[31] 377 U.S. at 924. See also *Deal* v. *Cincinnati Board of Education*, No. 16863, 6th Cir., Dec. 6, 1966, p. 10, where the Sixth Circuit held that "bare statistical imbalance alone is not forbidden." Similar expressions are found in the opinions of the Fourth and Tenth Circuits:

"[T]here is no constitutional requirement that it [the school board] act with the conscious purpose of achieving the maximum mixture of races in the school population. The Constitution permits the board to consider natural geographic boundaries, accessibility of particular schools and many other factors which are unrelated to race. So long as the boundaries are not drawn for the purpose of maintaining racial segregation, the school board is under no constitutional requirement that it effectively and completely counteract all of the effects of segregated housing patterns. *Swann* v. *Charlotte-Mecklenburg Board of Education*, No. 10,207, 4th Cir., Oct. 24, 1966, pp. 6, 7.

"[T]he 14th amendment prohibits segregation, it does not command integration of the races in the public schools and Negro children have no constitutional right to have white children attend school with them . . . .

"We conclude that the decisions in Brown and the many cases following it do not require a school board to destroy or abandon a school system developed on the neighborhood plan, even though it results in a racial imbalance in the schools where, as here, that school system has been honestly and conscientiously constructed with no intention or purpose to maintain or perpetuate segregation." *Downs* v. *Board of Education*, 336 F. 2d at 998. See also *Lynch* v. *Kenston School District Board of Education*, 229 F. Supp. 740 (N.D. Ohio 1964), and *Henry* v. *Godsell*, 165 F. Supp. at 91, where the court said "the plaintiff has no constitutionally guaranteed right to attend a public school outside of the attendance area in which she resides."

[32] *Sealy* v. *Department of Public Instruction*, 252 F. 2d at 901 (dictum).

[33] *Avery* v. *Wichita Falls Independent School District*, 241 F. 2d 230, 233 (5th Cir.) (dictum), cert. denied, 353 U.S. 938 (1957); *Holland* v. *Board of Public Instruction*, 258 F. 2d 730, 731 (5th Cir. 1958) (dictum); *Borders* v. *Rippy*, 247 F. 2d 268, 271 (5th Cir. 1957) (dictum). Cf. *Stell* v. *Savannah-Chatham County Board of Education*, 333 F. 2d 55 (5th Cir.) (dictum), cert. denied, 379 U.S. 933 (1964).

[34] *Barksdale* v. *Springfield School Committee*, 348 F. 2d 261 (1st Cir. 1965).

[35] *Evans* v. *Ennis*, 281 F. 2d 385, 389 (3d Cir. 1960), cert. denied, 364 U.S. 802 (1961) [emphasis added]. See also the lower court opinion (*Evans* v. *Buchanan*, 172 F. Supp. 508 (D. Del. 1959)), where a Federal district court in the Third Circuit refused to approve a provision of a desegregation plan which provided that "whenever possible, every pupil in the grades affected, . . . shall have the choice of (a) attending the nearest school within the district in which he resides or (b) attending the school he would have attended prior to the effective date of this order" (*Id.* at 516). The court said: "Now, it is a fact that in Georgetown, for example, the majority of the Negroes live in a community known as The Hill. The colored school is close by. The white school is at much greater distance. Interpreting the language [of the above quoted provision] in the light of these facts, it would seem to result that no Negro student whose family resides on The Hill may ever enter the white school.

Footnote continued on following page.

dual systems. This view, expressed in a dictum of Judge Parker, is that "the Constitution . . . does not require integration. It merely forbids discrimination."[36] The Third Circuit view, however, recently has received support in two other courts of appeals. In *Singleton* v. *Jackson Municipal Separate School District,*[37] the Court of Appeals for the Fifth Circuit, dealing with the adequacy of a desegregation plan of the school authorities of Jackson, Miss., said in a footnote:

> In retrospect, the second *Brown* opinion clearly imposes on public school authorities the duty to provide an integrated school system. Judge Parker's well-known dictum ("the Constitution . . . does not require integration. It merely forbids discrimination") in *Briggs* v. *Elliott* . . . should be laid to rest. It is inconsistent with *Brown* and later development of decisional and statutory law in the area of civil rights.[38]

In a subsequent opinion in the same case, the court reiterated that "school authorities . . . are under the constitutional compulsion of furnishing a single, *integrated* school system."[39] More recently, in *United States* v. *Board of Education of Jefferson County,*[40] the same court again stated that a State must "take affirmative action to reorganize its school system by *integrating* the students, faculties, facilities, and activities."[41] The court suggested that the *Briggs* dictum was a facet of the Fourth Circuit's view—now abandoned—that 14th amendment rights are exclusively individual rights which must be asserted individually after each plaintiff has exhausted State administrative remedies, and that, therefore, class suits may not be brought.[42] In the *Jefferson County* case the Fifth Circuit stated: "What is wrong about *Briggs* is that it drains out of *Brown* that decision's significance as a class action to secure equal educational opportunities for Negroes by compelling the States to reorganize their public school systems."[43] See also *Kemp* v. *Beasley,*[44] where the Eighth Circuit—also in a case involving desegregation from a dual system—rejected the *Briggs* dictum, stating that "it is logically inconsistent with *Brown* and subsequent decisional law on the subject."

The implications of the rejection by the Third, Fifth, and Eighth Circuits of Judge Parker's dictum on the constitutional issue of whether a school system has a duty to relieve adventitious segregation not imposed by law are as yet unclear.[45] While the *Jefferson County* opinion does draw a distinction between adventitious school segregation and school segregation which has been compelled by law and is the product of a biracial system, it also notes that "psychological harm and lack of educational opportunities to Negroes may exist whether caused by de facto or de jure segregation," although "a State policy of apartheid aggravates the harm."[46] And at one point in its opinion the court, although stressing that the holding of *Brown*

Whatever may have been the reasons for this provision, it strikes me as unfair and is ordered to be stricken" (*Ibid.*).

The court was asked to restore the provision but refused, noting: "Read against a background of geographical facts of which judicial knowledge may be taken, it provided that in many localities no colored student could ever attend a white school unless his parents thereafter changed their residence to a point closer to the white school than the colored school." *Evans* v. *Buchanan,* 173 F. Supp. 891, 892 (D. Del. 1959).

[36] *Briggs* v. *Elliott,* 132 F. Supp. 776, 777 (E.D. S.C. 1955).

[37] 348 F. 2d 729 (5th Cir. 1965).

[38] *Id.* at 730, n. 5.

[39] *Singleton* v. *Jackson Municipal Separate School District,* 355 F. 2d 865, 869 (5th Cir. 1966) (emphasis added).

[40] No. 23345, 5th Cir., Dec. 29, 1966.

[41] *Id.* at 19 [emphasis added].

[42] *Id.* at 20–22.

[43] *Id.* at 22.

[44] 352 F. 2d 14 (8th Cir. 1965).

[45] In *Kemp,* the court stated that the *Briggs* dictum "may be applicable in some logical areas where geographic zones permit of themselves without discrimination a segregated school system, but must be equally inapplicable if applied to school systems where the geographic or attendance zones are biracially populated" (*Id.* at 21).

[46] *Id.* at 23b.

"occurred within the context of State-coerced segregation," noted that "*Brown* points toward the existence of a duty to integrate de facto segregated schools."[47]

Three decisions of Federal district courts have held or suggested that there is a constitutional duty to relieve adventitious school segregation which must be implemented within the limits of feasibility and sound educational practice. Unlike the cases in which the courts have sustained the constitutionality of adventitious school segregation, in each of the cases holding or suggesting that such segregation is unconstitutional, the question of whether it has a damaging effect on Negro children has been reached and, in each case, answered affirmatively.

In *Branche* v. *Board of Education* (Hempstead)[48], the plaintiffs, charging that the school board had been maintaining racially segregated schools, sought an injunction prohibiting this practice and restraining the enlargement of two predominantly Negro schools. The attendance lines had been drawn in 1949 when the two schools were 16.5 and 14.3 percent Negro. By 1961 the schools had become 67 and 78 percent Negro.[49] The court accepted the contention of the superintendent that segregation in the schools was the result of residential patterns rather than gerrymandering or any other deliberately discriminatory action by the school authorities.[50] Denying the school board's motion for summary judgment, the court said:

> [But] these facts do not demonstrate that there has not been segregation because of race. Segregated education is inadequate and when that inadequacy is attributable to State action it is a deprivation of a constitutional right.[51]

The court declared further:

> The educational system that is . . . compulsory and publicly afforded must deal with the inadequacy arising from adventitious segregation; it cannot accept and indurate segregation on the ground that it is not coerced or planned but accepted.[52]

This language unambiguously suggests an affirmative duty to relieve adventitious racial isolation in the public schools.[53] The court, however, went on to say that "how far that duty extends is not answerable perhaps in terms of an unqualified obligation to integrate public education without regard to circumstance and it is certainly primarily the responsibility of the educational authorities and not the courts to formulate the educational system."[54]

In *Blocker* v. *Board of Education* (Manhasset)[55], a different judge on the same court filed an opinion which, like *Branche*, suggests that the States constitutionally are obliged to relieve adventitious school segregation. In *Blocker*, 99.2 percent of the white children attended two all-white schools while 100 percent of the Negro children attended a separate school.[56] The attendance lines were drawn in 1929 and had not changed since. A rigid no-transfer policy was enforced.[57]

The court noted that "the facts in this case present a situation that goes beyond mere racial imbalance"[58] and that "for all practical purposes, the elementary school system of the defendant district . . . is as racially segregated as those in Brown." [58] Earlier, the court had stated:

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[47] *Id.* at 32.
[48] 204 F. Supp. 150 (E.D. N.Y. 1962).
[49] *Id.* at 152.
[50] *Id.* at 151.
[51] *Id.* at 153.
[52] *Ibid.*
[53] A Federal district court in Illinois, however, seems to have construed *Branche* as attributing to the school board's inaction a racially discriminatory motive. In *Webb* v. *Board of Education* (Chicago), 223 F. Supp. 466 (N.D. Ill. 1963), the court viewed *Branche* as involving a "passive refusal to redistrict unreasonable boundaries" and asserted that according to the *Branche* opinion "mere residential segregation was not enough" (*Id.* at 468, 469).
[54] 226 F. Supp. at 153.
[55] 226 F. Supp. 208 (E.D. N.Y. 1964).
[56] *Id.* at 212.
[57] *Id.* at 226.
[58] *Id.* at 225.

> Viewed in this context then, can it be said that one type of segregation, having its basis in State law or evasive schemes to defeat desegregation, is to be proscribed, while another, having the same effect but a different cause, is to be condoned? Surely, the Constitution is made of sturdier stuff.[59]

The court concluded that "in a publicly supported, mandatory State educational system, the plaintiffs have the civil right not to be segregated, not to be compelled to attend a school in which all of the Negro children are educated separate and apart from over 99 percent of their white contemporaries." [60] The court stressed that:

> It does not hold that racial imbalance and segregation are synonymous or that racial imbalance not tantamount to segregation is violative of the Constitution. It does hold that by maintaining and perpetuating a segregated school system the defendant board has transgressed the prohibitions of the equal protection clause of the 14th amendment.[61]

Under the theory of the court in *Blocker*—that Negroes had a constitutional right to be free from totally segregated education—it was not necessary, on the merits of the constitutional question, to inquire into whether adventitious segregation damaged Negro pupils. The court did conclude, however, that in order to obtain relief, the plaintiffs had to show that they were injured by the segregation. On this question the court found that the segregation damaged the plaintiffs psychologically, just as formal segregation had been held in *Brown* to damage the plaintiffs there. Pointing out that a remedy was available, the court observed that there were not "present here the complicated problems present in Gary, Ind., with a public school population of over 43,000, of which 53.5 percent are Negroes, or in large metropolitan areas—New York City, for example. There are, no doubt, situations in which no alternative may be feasible. No such insurmountable obstacle appears to be present here." [62]

More recently in *Barksdale* v. *Springfield School Committee*,[63] the court found that in at least seven of the 38 elementary schools and one of the eight junior high schools in the Springfield, Mass. school system Negro and Puerto Rican students were in the majority.[64] The court concluded: "In the light of the ratio of white to nonwhite in the total population . . . a non-white attendance of appreciably more than 50 percent in any one school is tantamount to segregation." [65] Noting that those schools attended by a majority of Negro students "consistently rank lowest in achievement ratings based on the 'Iowa Test of Basic Skills' "; that Negro students who transferred to other schools had difficulty in keeping up with the students in those schools, and that special programs for gifted children who had attained a high achievement level contained a few or no Negro students, the court found that the opportunity of Negro children in predominantly nonwhite schools to obtain equal educational opportunities was impaired. It stated that such racially imbalanced schools are not conducive to learning: that is, to retention, performance, and the development of creativity; and that such schools communicate to Negro children that they are different and are expected to be different from white children.

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[58] *Id.* at 226.

[59] *Id.* at 223.

[60] *Id.* at 227.

[61] *Id.* at 230. Some commentators have viewed the *Blocker* decision as concerned with racially motivated imbalance. See Note, 50 Va. L. Rev. 464, 481 (1964). But while some of the court's language can be construed to suggest doubt about the school board's good faith, see 226 F. Supp. at 226, the court made no finding that the motive of the board was discriminatory. The court seemed more concerned with the grossness of the separation of the races rather than with any discriminatory motive, and appears to have ruled that where separation is virtually complete, the racial imbalance becomes "segregation," which—regardless of motive—is forbidden by the 14th amendment. Whether the court regarded the duty to eliminate total segregation as absolute is not clear.

[62] 226 F. Supp. at 229.

[63] 237 F. Supp. 543 (D. Mass. 1965).

[64] *Id.* at 545. The total elementary enrollment for 1963–64 was 19,417, of whom 15,588 (80.3 percent) were white; 3,386 (17.4 percent) were Negro; and 443 (2.3 percent) were Puerto Rican. All of the Negro students except 595 were enrolled in 8 elementary schools (*Id.* at 546).

[65] *Id.* at 544.

The court said that the issue was not, as framed in *Bell*, whether there is a constitutional duty to remedy imbalance, but rather "whether there is a constitutional duty to provide equal educational opportunities for all children within the system." Speaking to this question, the court declared:

> While Brown answered that question affirmatively in the context of coerced segregation, the constitutional fact—the inadequacy of segregated education—is the same in this case, and I so find. It is neither just nor sensible to proscribe segregation having its basis in affirmative State action while at the same time failing to provide a remedy for segregation which grows out of discrimination in housing, or other economic or social factors. Education is tax supported and compulsory, and public school educators, therefore, must deal with inadequacies within the educational system as they arise, and it matters not that the inadequacies are not of their making. This is not to imply that the neighborhood school policy per se is unconstitutional, but that it must be abandoned or modified when it results in segregation in fact.[67]

The school district was ordered to submit a plan "to eliminate to the fullest extent possible racial concentration . . . within the framework of effective educational procedures, as guaranteed by the equal protection clause of the Fourteenth amendment . . ."[68]

On appeal the district court's order was vacated.[69] First, the court of appeals noted that although the opinion of the lower court appeared to hold that plaintiffs had a constitutional right to the abolition of racial imbalance to preserve their equal education rights, its order was restricted to reduction "only so far as feasible within the framework of effective educational procedures."[70] The court construed the order to mean that "racial imbalance disadvantages Negro students and impairs their educational opportunities as compared with other races to such a degree that they have a right to insist that the defendants consider their special problems along with all other relevant factors when making administrative decisions."[71]

Citing *Bell* and *Downs*, the court of appeals rejected the suggestion in the district court's opinion that the plaintiffs had an absolute right to have "what the court found to be tantamount to segregation removed at all costs."[72] But it was not decided whether the Constitution required the defendants to furnish the more limited relief provided by the district court's order. The court of appeals found that since, at the time suit was instituted against them, the defendants were in the process of taking voluntarily the same action as required by the order, the plaintiffs had no present need of a remedy. Accordingly, the court of appeals directed the district court to vacate its order and to dismiss the complaint without prejudice.[73]

Like the Federal courts, State courts which have expressed a view on whether adventitious segregation is consistent with the Federal Constitution are divided.

In *Jackson* v. *Pasadena City School District*,[74] the trial court dismissed a complaint charging that the school board purposefully had segregated Negro students by a racial gerrymander of attendance areas. In reversing the decision of the trial court and remanding the case, the California Supreme Court announced in dictum:

> [E]ven in the absence of gerrymandering or other affirmative discriminatory conduct by a school board, a student under some circumstances would be entitled to relief where, by reason of residential segregation, substantial racial imbalance exists in his school. . . . Where such segregation exists it is not enough for a school board to refrain from affirmative discriminatory

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[67] *Id.* at 546.
[68] *Id.* at 547.
[69] *Springfield School Committee* v. *Barksdale*, 348 F. 2d 261 (1st Cir. 1965).
[70] *Id.* at 263.
[71] *Id.* at 264.
[72] *Ibid.*
[73] *Id.* at 264, 265.
[74] 31 Cal. Rptr. 606, 382 P. 2d 878 (1963).

> conduct. The harmful influence on the children will be reflected and intensified in the classroom if school attendance is determined on a geographic basis without corrective measures. The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause.[75]

The court further noted that the California State Board of Education had adopted regulations "which encourage transfers to avoid and eliminate racial segregation." [76]

The court suggested some of the factors which school officials should consider in designing their attendance policies:

> School authorities, of course, are not required to attain an exact apportionment of Negroes among the schools, and consideration must be given to the various factors in each case, including the practical necessities of governmental operation. For example, consideration should be given, on the one hand, to the degree of racial imbalance in the particular school and the extent to which it affects the opportunity for education and, on the other hand, to such matters as the difficulty and effectiveness of revising school boundaries so as to eliminate segregation and the availability of other facilities to which students can be transferred.[77]

It is not entirely clear whether the *Jackson* dictum rests upon Federal constitutional grounds, upon the cited administrative regulations of the State Department of Education, or both. In *Mulkey* v. *Reitman*,[78] however, the Supreme Court of California cited *Jackson* in the course of considering a 14th amendment question, stating that it had held in *Jackson* that "the State, because it had undertaken through school districts to provide educational facilities to the youth of the State, was required to do so in a manner which avoided segregation and unreasonable racial imbalance in its schools." [79]

II. Actions by States To Eliminate Racial Isolation

The courts have ruled that purposeful segregation of Negro and white pupils, whether the result of action or inaction by school authorities, is unconstitutional even where such segregation is not formally imposed or expressly permitted by law and even where it is less than complete. The courts have been less prepared to hold that there is a constitutional duty to eliminate adventitious school segregation. Beyond the matter of constitutional obligation, however, lies the area of State and local legislative and administrative action to relieve racial isolation in the schools. We now turn to what the States have done to require local school authorities to correct or reduce racial isolation.

A. STATES WHICH HAVE TAKEN THE POSITION THAT RACIAL ISOLATION IN THE PUBLIC SCHOOLS IS HARMFUL

California, Massachusetts, New York, New Jersey, Wisconsin, and Connecticut have taken the position, in executive or judicial statements, that racial isolation in the schools has a damaging effect on the educational opportunities of Negro pupils. The Supreme Court of California so stated in the *Jackson* case.[80] Three years earlier, in 1960, the Board of Regents of the State of New York stated that:

> Modern psychological knowledge indicates that schools enrolling students largely of homogeneous ethnic origin, may damage the personality of minority group

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[75] 31 Cal. Rptr. at 609, 610, 382 P. 2d at 881, 882.

[76] 31 Cal. Rptr. at 610, 382 P. 2d at 882.

[77] *Ibid.*

[78] 50 Cal. Rptr. 881, 413 P. 2d 825, cert. granted, 35 U.S. L. Week 3197 (U.S. Dec. 6, 1966).

[79] *Id.* at 887, 413 P. 2d at 831. See also, *Keller* v. *Sacramento City Unified School District*, No. 146525, Super. Ct., Sacramento County, Cal., Oct. 8, 1963, 8 *Race Rel. L. Rep.* 1406 (1963).

In *In re Skipwith*, 14 Misc. 2d 325, 180 N.Y.S. 2d 852 (1958), on the other hand, the Domestic Relations Court of the City of New York rejected the contention that adventitious segregation in the public schools of New York City constituted a denial of equal protection of the laws.

[80] *Jackson* v. *Pasadena City School District*, 31 Cal. Rptr. at 609, 610, 382 P. 2d at 881, 882.

> children. Such schools decrease their motivation and thus impair the ability to learn. Public education in such a setting is socially unrealistic, blocks the attainment of the goals of democratic education, and is wasteful of manpower and talent, whether this situation occurs by law or by fact.[81]

In the same year, the New Jersey Commissioner of Education concluded that "in the minds of Negro pupils and parents a stigma is attached to attending a school whose enrollment is completely or almost exclusively Negro, and that this sense of stigma and resulting feeling of inferiority have an undesirable effect upon attitudes related to successful learning." [82] In 1965, a report adopted by the Massachusetts State Board of Education concluded that a racially imbalanced school was detrimental to sound education.[83]

On December 7, 1966, the Connecticut Board of Education adopted a policy statement which recognized that "the high concentration of minority group children in urban schools produces special problems in providing quality education. Isolation and lack of exposure to the mainstream of American society make it difficult for these children to achieve their full education potential." [84]

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[81] Statement of the Board of Regents of the State of New York adopted on Jan. 28, 1960. See also the special message from the state commissioner of education to all chief local school administrators and presidents of boards of education, 8 *Race Rel. L. Rep.* 738 (1963) and "Report of the Advisory Committee on Human Relations and Community Tensions," Apr. 30, 1963, quoted in *Mitchell* v. *Board of Education*, 8 *Race Rel. L. Rep.* 735, 739–40 (1963).

[82] *Fischer* v. *Board of Education* (Orange), 8 *Race. Rel. L. Rep.* 730, 733–734 (N.J. Comm. of Ed. 1963). See also *Booker* v. *Board of Education* (Plainfield), 8 *Race Rel. L. Rep.* 1228 (1963); *Spruill* v. *Board of Education*, 8 *Race Rel. L. Rep.* 1234 (1963).

[83] *Because It Is Right—Educationally,* Report of the Advisory Committee on Racial Imbalance and Education, Massachusetts State Board of Education, April 1965 (commonly known as the *Kiernan Report*). The report stated of racial imbalance that:

> —It does serious educational damage to Negro children by impairing their confidence, distorting their self-image, and lowering their motivation.
> —It does moral damage by encouraging prejudice within children regardless of their color.
> —It presents an inaccurate picture of life to both white and Negro children and prepares them inadequately for a multiracial community, nation, and world.
> —It too often produces inferior education facilities in the predominantly Negro schools.
> —It squanders valuable human resources by impairing the opportunities of many Negro children to prepare for the professional and vocational requirements of our technolgical society. (*Id.* at 2.)

In June 1964, the Pennsylvania Human Relations Commission issued guidelines for school districts to observe in alleviating racial imbalance (Pennsylvania Human Relations Commission, "Guidelines for Fuller Integration of Elementary and Secondary Public Schools," July 17, 1964). Subsequently, finding after a hearing that racial imbalance in the Chester, Pa. schools had dulled the motivation and depressed the achievement level of the city's Negro pupils (Record, vol. III, p. 1249a, *Pennsylvania Human Relations Commission* v. *Chester School District*, No. 637, Ct. of Common Pleas of Dauphin County, 1964), the commission issued a remedial order (*Id.* at 1277a). Subsequently, however, the State Court of Common Pleas held that the commission had no jurisdiction "to enter a remedial order directed at mere 'de facto' segregation" (*Pennsylvania Human Relations Commission* v. *Chester School District*, No. 304, Super. Ct. of Pa., Nov. 17, 1966). The Superior Court affirmed (*Ibid.*). The order is being appealed by the Commission. Petition for allowance of appeal, *Pennsylvania Human Relations Commission* v. *Chester School District*, *supra.*

[84] *Policy Statement of Connecticut State Board of Education Concerning Quality Education for Children in Minority Groups,* Dec. 7, 1966, series 1961–67, circular letter No. 6–8, Dec. 12, 1966.

In 1966, the Wisconsin State Superintendent of Public Instruction stated: "[S]chools . . . which are unrepresentative of the general community structure may not adequately meet the needs of the children concerned. We believe that lack of opportunities for some form of integration is harmful to the white community as well as it is to the colored community." (Statement by the Wisconsin State Superintendent of Public Instruction, entitled "Department Policy Statement on De Facto Segregation and Disadvantaging Conditions," March 1966.)

B. STANDARDS

A small number of States have required some type of action to correct or alleviate racial imbalance in the public schools. These States have established guidelines on the degree of imbalance which should trigger relief.

The Massachusetts legislature has defined a racially imbalanced school as one where the percentage of nonwhites exceeds 50 percent of the total enrollment.[85] The New York Commissioner of Education has defined a racially imbalanced school as one having 50 percent or more Negro pupils enrolled.[86] The Supreme Court of California and the Supreme Court of New Jersey have indicated that "substantial" imbalance would call for relief.[87] Illinois, which by statute requires consideration of ethnic factors in drawing school attendance areas and in selecting school sites, imposes no statutory requirement upon local school authorities to take corrective action which is dependent upon the proportion of Negroes to whites in a particular school, but an Illinois court has construed the statute to require corrective action where a school was 76 percent Negro.[88] On November 30, 1966, the Maryland State Board of Education, in a formal opinion, announced that "as long as the neighborhood school concept is not violated, efforts ought to be made to avoid lopsided racial imbalance in the composition of the student bodies." [89]

C. EXTENT OF DUTY

Massachusetts and New York purport to require the elimination of racial imbalance in all schools. The Supreme Court of California has cautioned that "consideration must be given to the various factors in each case, including the practical necessities of governmental operation," including "the difficulty and effectiveness of revising school boundaries so as to eliminate segregation and the availability of other facilities to which students can be transferred." [90] The Supreme Court of New Jersey requires "a reasonable plan achieving the greatest dispersal consistent with sound educational values and procedures." Many factors must be "conscientiously weighed by the school authorities," including "considerations of safety, convenience, time economy, and the other acknowledged virtues of the neighborhood policy." [91] The Illinois law requires local school authorities to consider the effects of racial imbalance, along with other relevant educational factors, in selecting school sites and drawing attendance zones.[92] In Maryland, the State Board of Education requires school districts to eliminate "lopsided" racial imbalance, but only when consistent with the neighborhood school concept.[93]

D. IMPLEMENTATION

The Massachusetts policy is supported by the strongest enforcement powers. In August 1965, the Massachusetts Legislature enacted a Racial Imbalance Act, which provides that upon notification by the State Board that a school within its system is racially imbalanced, a school committee must prepare and file with the board a plan to eliminate the imbalance.[94] If the committee fails to show progress within a reasonable time in eliminating racial imbalance in its school system, the Commissioner of Education must refuse to certify all State school aid for that system.[95]

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[85] Mass. Gen. Laws, ch. 15, sec. 1–I; ch. 71, secs. 37C, 37D (1965).

[86] Memorandum from State Commissioner of Education to all Chief Local School Administrators and Presidents of Boards of Education, 8 *Race Rel. L. Rep.* 738, 739 (1963). See *Mitchell* v. *Board of Education,* 8 *Race Rel. L. Rep.* 735 (1963).

[87] *Jackson* v. *Pasadena City School District,* 31 Cal. Rptr. at 609, 382 P. 2d at 881; *Booker* v. *Board of Education* (Plainfield), 45 N.J. 161, 178, 212 A. 2d 1, 10 (1965).

[88] *Tometz* v. *Board of Education, Waukegan City School, School District No. 61,* Civil No. 65–3917, Cir. Ct. of the 19th Jud. Cir., Lake County, Ill., July 20, 1966.

[89] *In the Matter of Parole School Attendance Area,* Maryland State Board of Education, Nov. 30, 1966, p. 4.

[90] *Jackson* v. *Pasadena City School District,* 31 Cal. Rptr. at 610, 382 P. 2d at 882.

[91] *Booker* v. *Board of Education,* 45 N.J. 161, 180, 212 A. 2d 1, 11 (1965).

[92] *Infra.*

[93] *In the Matter of Parole School Attendance Area,* Maryland State Board of Education, Nov. 30, 1966, p. 4.

Massachusetts is the only State which requires, either by law or administrative regulation, that State educational funds be withheld from school systems operating racially imbalanced schools.

Like Massachusetts, Illinois has passed legislation designed to alleviate racial imbalance.[96] In June 1963, in the Armstrong Act, Illinois amended its school code by adding the following sentence to the sections dealing with the erection and acquisition of school buildings:

> In erecting, purchasing, or otherwise acquiring buildings for school purposes, the board shall not do so in such a manner as to promote segregation and separation of children in public schools because of color, race or nationality.[97]

To the sections dealing with attendance units[98] and subdistricts[99] the following provision was added:

> As soon as practicable, and from time to time thereafter, the board shall change or revise existing units [subdistricts] or create new units [subdistricts] in a manner which will take into consideration the prevention of segregation and the elimination of separation of children in public schools because of color, race or nationality.

Enforcement of these provisions appears to be left to the courts upon the complaints of aggrieved individuals.[100]

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[94] Mass. Gen. Laws, ch. 71, sec. 37D (1965). The act requires each school committee within the State to submit annually to the State Board of Education a racial census of its schools. Should the board determine that racial imbalance exists in any school, it must so notify the school committee operating the school.

[95] Mass. Gen. Laws, ch. 15 sec. 1(I) (1965). Under this statute, the State Board of Education voted unanimously to withdraw State financial aid from the Boston school system in April 1966, after having rejected a plan submitted by the Boston School Committee. On June 13, 1966, the Boston School Committee submitted a revised plan in an effort to comply with the law (Boston School Committee, Racial Imbalance Plan, June 13, 1966). This plan was rejected by the State Board of Education on June 28, 1966 (Massachusetts Board of Education, Review of Boston School Committee Revised Plan on Racial Imbalance, June 28, 1966). On July 26, 1966, this rejection was reaffirmed. On Aug. 5, 1966, the Boston School Committee filed suit in Superior Court against the State Board of Education challenging the State Board's actions (*School Committee of the City of Boston* v. *The Board of Education,* Docket No. 85853—equity, Aug. 5, 1966). On Sept. 26, 1966, the Boston School Committee filed a second suit in Superior Court challenging the constitutionality of the act (*Eisenstadt* v. *Board of Education,* Docket No. 86080—equity, Sept. 23, 1966). In the first suit the superior court has ruled that the State Board of Education acted arbitrarily in withholding funds from the Boston public schools. *School Committee of the City of Boston* v. *State Board of Education, supra,* Dec. 21, 1966.

[96] The Illinois statutes contain certain exemptions for school districts with populations from 1,000 to not more than 500,000.

[97] Ill. Stat. Ann. ch. 122, sec. 10–20.11 (Smith-Hurd Supp. 1963) (applicable to school districts with populations from 1,000 to not more than 500,000: Ill. Stat. Ann. ch. 122, sec. 10–1, 10–10 (Smith-Hurd 1962)); Ill. Stat. Ann. ch. 122, sec. 34–22 (Smith-Hurd Supp. 1965) (applicable to the city of Chicago: Ill. Stat. Ann. ch. 122, sec. 34–1, 34–2 (Smith-Hurd 1962)). Two months later, however, this sentence was deleted from the section covering school districts with populations not more than 500,000. Ill. Stat. Ann. ch. 122, sec. 10–22.36 (Smith-Hurd Supp. 1965), Senate Bill No. 909, sec. 2 (1963).

[98] Ill. Stat. Ann. ch. 122, sec. 10–21.3 (Smith-Hurd Supp. 1965) which applies to school districts with populations not more than 500,000 (Ill. Stat. Ann. ch. 122, sec. 10–1, 10–10 (Smith-Hurd 1962)).

[99] Ill. Stat. Ann. ch. 122, sec. 34–18 (7) (Smith-Hurd Supp. 1965) which applies to the city of Chicago. Ill. Stat. Ann. ch. 122, sec. 34–1, 34–2 (Smith-Hurd 1962).

[100] On July 20, 1966, an Illinois Circuit Court held that the Armstrong Act was "a clear injunction to public school boards in this state to act to correct the racial imbalance in schools as soon as practicable." *Tometz* v. *Board of Education,*

Footnote continued on following page.

New Jersey, New York, and California have taken action against racial imbalance either through administrative regulations, quasi-judicial rulings of the State Commissioner of Education, judicial decisions of State courts, or a combination of these means. In New Jersey and New York, reliance has been placed on general provisions of State law guaranteeing equal educational opportunity. The sanctions available to enforce these regulations and rulings vary. In New York, where the Commissioner of Education has required local school authorities to eliminate racial imbalance the Commissioner has authority under State law to withhold funds or to remove school board members for failure to comply with his determinations.[101] The New Jersey Commissioner of Education has the power to withhold funds if a school district fails to "comply with the regulations and standards for the equalization of opportunity which have been or . . . may be prescribed by law or formulated by the Commissioner of Education or the State Board pursuant to law."[102]

The sanctions available to the New York and New Jersey commissioners are lacking in California, where the State Board of Education, pursuant to its statutory rulemaking authority, has issued regulations—approved by the Supreme Court of California—requiring school boards to take certain action to avoid racial imbalance.[103] It is not clear what sanctions, if any, the State Board may impose in the event of failure to comply.[104]

In Maryland the State Board, which is charged with the power of determining the educational policies of the State and has "the last word on any matter concerning educational policy or the administration of its system of public education," has the power to specify school district boundaries.[105]

Waukegan City School District No. 61, Civil No. 65–3917, Cir. Ct. of the 19th Jud. Cir., Lake County, Ill., July 20, 1966, p. 11. The court held that the act was constitutional. The school which plaintiffs' children attended was 76 percent Negro while four surrounding schools were all white. The school board was ordered to file a plan with the court "making a reasonable revision of some or all of the aforesaid attendance unit boundaries in order to, in some measure, ameliorate the racial imbalance presently existing in the units in question" (*Id.* at 12). In holding that "state action to deal with problems of racial imbalance in schools is constitutional," the court laid down the "necessary corollary" that the "state corrective action be reasonable and related" [sic] (*Id.* at 7).

[101] N.Y. Ed. Code, title 1, art. 7, sec. 306 (1957).

[102] N.J. Stat. Ann. 18: 10–29.44 (1954).

[103] On Feb. 20, 1963, the California Board of Education, acting under its statutory rulemaking authority (Calif. Ed. Code § 152), filed an amendment to title 5 of the California Administrative Code which provides that, to avoid, "insofar as practicable, the establishment of attendance areas and attendance practices which in practical effect discriminate upon an ethnic basis against pupils or their families or which in practical effect tend to establish or maintain segregation on an ethnic basis," the governing board of a school district in establishing attendance areas and attendance practices shall include ethnic factors among the factors considered (§ 2011).

In May 1963, the State board implemented its policy by promulgating two more amendments to title 5. One directed the department of education to give "special attention" to ethnic factors in approving school sites (California Administrative Code, title 5, § 2001. (Reprinted in "California Laws and Policies Relating to Equal Opportunities in Education," 3 (Sacramento, 1966)). The other stipulated that each recommendation for the organization of a new district submitted by a county committee shall contain an assurance that in its judgment the "new district will not place obstacles in the way of achieving racial integration in the schools." (Calif. Admin. Code, title 5, § 135.3(e)(2).)

[104] Telephone interview with Mr. Lawrence Kerney, counsel for the California State Board of Education, Dec. 12, 1966.

[105] *In the Matter of Parole School Attendance Area,* Maryland State Board of Education, Nov. 30, 1966, pp. 3, 4.

Four other States—Indiana, Michigan, Wisconsin, and the State of Washington—in some measure have encouraged local school authorities to take action to alleviate racial imbalance, without making such action an enforceable requirement. Burns Ind. Stat. Ann. 28–5157 (1965); Joint statement, Michigan State Board of Education and Michigan Civil Rights Commission, Apr. 23, 1966, pp. 1–2; "Suggested

Footnote continued on following page.

In Massachusetts, the State Board is required to provide technical assistance to school committees in formulating plans to relieve racial imbalance. The school building assistance commission, moreover, is required to increase the amount of grants for school construction to 65 percent of the approved cost whenever the board of education is satisfied that the construction or enlargement of a school is for the purpose of reducing or eliminating racial imbalance in the school system. In 1966, the New York State Legislature appropriated a million dollars partly to assist school districts in the State to develop plans and programs for correcting racial isolation in the schools.[106]

E. JUDICIAL CHALLENGES TO REMEDIAL ACTION

The courts consistently have upheld actions at the State or local level designed to eliminate or alleviate racial imbalance in the public schools against the charge by white parents that it is unconstitutional or unlawful to take race into consideration.

In *Fuller* v. *Volk*,[107] the Englewood School Board, under a plan to reduce racial imbalance in the elementary schools, assigned all sixth-grade pupils to one city-wide school (Lincoln) and gave all the students in grades one through five at Lincoln the option to attend other specified elementary schools.[108] The plaintiffs, parents of white sixth-grade children, argued that the plan had been adopted solely because of racial considerations, that their children were being discriminated against on the basis of race because they could not attend their neighborhood school, and that therefore the plan was unconstitutional. Disagreeing, the court held that "a local board of education is not constitutionally prohibited from taking race into account in drawing or redrawing school attendance lines for the purpose of reducing or eliminating de facto segregation in its public schools." [109]

Action taken to implement the New York policy on racial imbalance has been challenged frequently in the courts as repugnant to the due process and equal protection clauses of the 14th amendment and to New York State law. But except in one case where the results were held to be arbitrary and capricious, the lawsuits have been uniformly unsuccessful.[110] Although the State courts at first looked to see

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Guidelines for Providing for the Maximal Education of Children of all Races and Creeds in the Schools of Michigan" (1964) (Report to the State Superintendent of Public Instruction from the State Committee on Equal Educational Opportunity); Superintendent of Public Instruction, State of Washington, "Guide for Approved School Transportation," Aug. 26, 1966; Statement by the Wisconsin State Superintendent of Public Instruction, "Department Policy Statement on de Facto Segregation and Disadvantaging Conditions," March 1966.

[106] 106 Mass. Gen. Laws ch. 15 § 1–I (1965); Testimony of James E. Allen, Jr. Commissioner of Education, New York State, U.S. Commission on Civil Rights, "Manuscript of Transcript of Proceedings," Rochester, N.Y., 392–93, Sept. 17, 1966.

[107] 230 F. Supp. 25 (D. N.J. 1964), vacated and remanded for determination of jurisdiction, 351 F. 2d 323 (3d Cir. 1965), on remand 250 F. Supp. 81 (D. N.J. 1966).

[108] 230 F. Supp. at 28.

[109] *Id.* at 34. Similarly, in *Morean* v. *Board of Education* (Montclair), 42 N.J. 237, 200 A. 2d 97 (1964), the Supreme Court of New Jersey upheld the action of the Montclair School Board in closing a predominantly Negro junior high school and distributing the students evenly among the three other junior high schools until the school board could carry out a plan to replace all of the junior high schools with a single centrally located school. The court pointed out that "racial imbalance . . . though fortuitous in origin, presents much the same disadvantages as are presented by segregated schools" (*Id.* at 243, 200 A. 2d at 100). Declaring that racial classifications do not automatically violate the equal protection clause, the court held that the purpose of the racial classification is determinative of its constitutionality. Although the relocation plan was racially motivated, the court held it did not violate the 14th amendment since its purpose was to reduce racial imbalance (42 N.J. at 243–44, 200 A. 2d at 100). See also *Schults* v. *Board of Education* (Teaneck), 86 N.J. Super., 29, 205 A. 2d 762 (1964).

[110] *Balaban* v. *Rubin*, 20 App. Div. 2d 438, 248 N.Y.S. 2d 574, aff'd, 14 N.Y. 2d 193, 250 N.Y.S. 2d 281, cert. denied, 379 U.S. 881 (1964) (New York City);

Footnote continued on following page.

whether the school board plan was justified by educational factors other than a desire to overcome racial imbalance,[111] more recently a New York court indicated that a plan designed solely to correct racial imbalance would not for that reason be unconstitutional.[112] In Buffalo, after the commissioner of education had ordered the school board to remedy racial imbalance in the schools, suit was brought in Federal court attacking the order as a violation of the 14th amendment. Rejecting this argument, the court held that ". . . the 14th amendment, while prohibiting any form of invidious discrimination, does not bar cognizance of race in a proper effort to eliminate racial imbalance in a school system.[113]

The rationale of these decisions has been articulated by the Court of Appeals for the First Circuit. Commenting on a plan to relieve racial imbalance, the court stated in dictum:

> It has been suggested that classification by race is unlawful regardless of the worthiness of the objective. We do not agree. The defendants' proposed action does not concern race except insofar as race correlates with proved deprivation of educational opportunity. This evil satisfies whatever "heavier burden of justification" there might be. Cf. *McLaughlin* v. *State of Florida*, 1964, 379 U.S. 184, 194. . . . It would seem no more unconstitutional to take into account plaintiffs' special characteristics and circumstances that have been found to be occasioned by their color than it would be to give special attention to physiological, psychological, or sociological variances from the norm occasioned by other factors. That these differences happen to be associated with a particular race is no reason for ignoring them. [Citations omitted.] [114]

Ironically, those who maintain the position that school boards may not take race into account in formulating student assignment plans have relied on Mr. Justice Harlan's statement, dissenting in *Plessy* v. *Ferguson*,[115] that "our Constitution is colorblind, and neither knows nor tolerates classes among citizens." On August 15, 1963, the Attorney General of California, ruling in an official opinion that a school board may adopt a plan to relieve imbalance which utilizes race as a factor ". . . if the purpose of considering the racial factor is to effect desegregation in the schools, and the plan is reasonably related to the accomplishment of that purpose," gave the following response to this argument:

> "Our Constitution is colorblind" was Justice Harlan's admonition against the "separate but equal" doctrine. To decide that the combined thinking and efforts of persons of all races may not recognize a present inequality as the starting point in a program designed to help achieve that equality which

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Addabo v. *Donovan*, 43 Misc. 2d 621, 251 N.Y.S. 2d 856 (1964), aff'd, 22 App. Div. 383, 256 N.Y.S. 2d 178 (1965), aff'd, 16 N.Y. 2d 619, 261 N.Y.S. 2d 68 (1965) (New York City); *Schnepp* v. *Donovan*, 43 Misc. 2d 917, 252 N.Y.S. 2d 543 (1964) (New York City); *Strippoli* v. *Bickal*, 21 App. Div. 2d 365, 367, 250 N.Y.S. 2d 969, 972 (Rochester) reversing 42 Misc. 2d 475, 248 N.Y.S. 2d 588 (1964); *Di Sano* v. *Storandt*, 22 App. Div. 2d 6, 253 N.Y.S. 2d 411 (1964), reversing 43 Misc. 2d 272, 250 N.Y.S. 2d 701 (1964); *Katalinic* v. *City of Syracuse*, 44 Misc. 2d 734, 254 N.Y.S. 2d 960 (1964) (Syracuse); *Etter* v. *Littwitz*, 47 Misc. 2d 473, 262 N.Y.S. 2d 924 (1965) (Rochester); *Offermann* v. *Nitkowski*, 248 F. Supp. 129 (1965) (Buffalo); *Vetere* v. *Allen*, 15 N.Y. 2d 259, 258 N.Y.S. 2d 77 (1965) (Malverne).

In *Blumberg* v. *Donovan*, 10 *Race Rel. L. Rep.* 152 (No. 5065 N.Y. Sup. Ct. Queens County, special term, pt. I, July 8, 1964), a pairing plan of the New York City school board was invalidated on the ground that the results were "arbitrary and unreasonable" in that it compelled "the transfer of petitioner's children, who are of tender years (grades 3 to 6) and who now attend a school across the street from where they live, to a school approximately $\frac{9}{10}$ of a mile away, to and from which, if they return home for lunch, they must walk a total of about 4 miles a day, and each of the 4 times they make this trip must cross 12 street intersections including 2 heavily trafficked streets. . . ." (*ibid.*).

[111] See, e.g., *Balaban* v. *Rubin*, supra; *Strippoli* v. *Bickal*, supra; *Di Sano* v. *Storandt*, supra.

[112] *Katalinic* v. *City of Syracuse*, supra, at 736, 254 N.Y.S. 2d at 962.

[113] *Offermann* v. *Nitkowski*, 248 F. Supp. 129 (W.D. N.Y. 1965).

[114] *Springfield School Committee* v. *Barksdale*, 348 F. 2d 261, 266 (1st Cir. 1965).

[115] 163 U.S. 537, 559 (1896).

> Justice Harlan sought would be to conclude not merely that the Constitution is colorblind, but that it is totally blind.[118]

Summary: The courts have held purposeful school segregation to be unconstitutional—including segregation that is less than total. They have indicated that purposeful segregation which is the product of inaction is as repugnant to the 14th amendment as purposeful segregation which is the result of affirmative conduct. The courts have not been so ready to say that adventitious segregation is unconstitutional. That result has been reached only in a few cases involving smaller cities and suburban jurisdictions in which the Negro population did not constitute a large portion of the population and where the problem seemed susceptible of a judicial remedy. In these cases the courts have reached the question of whether adventitious segregation is harmful to Negro children and unanimously have concluded that it is. In suits against school systems of large cities, on the other hand, where the Negro school age population is a much larger proportion of the total school age enrollment, and where judges often have been troubled by the difficulty of devising a remedy which the school system could implement, the courts have ruled that adventitious segregation is not unconstitutional, without reaching the factual question of whether Negro students are harmed by such segregation. The courts have rejected claims by white parents that where the State or the school authorities take corrective action, the Constitution is violated.

Thus, the result of most judicial decisions to date has been to leave the question of remedying racial imbalance to the legislative and executive branches of the Federal and State governments. A small number of States have enumerated policies directed at correcting racial imbalance, and fewer still have provided machinery for implementing these policies. We turn next to a consideration of present Federal policy on racial isolation and the authority of Congress to take corrective action.

III. The Congressional Response

Congress has passed legislation aimed at eliminating racial discrimination in the assignment of children to public schools. But this legislation does not appear to dictate the imposition of sanctions solely for failure to overcome racial imbalance.

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[118] 42 Ops. Cal. Atty. Gen. 33, 34–35 (1963), 8 *Race Rel L. Rep.* 1303, 1305 (1963). See also 46 Ops. Cal. Atty. Gen. 45–47 (1965); *Guida* v. *Board of Education*, 26 Conn. Supp. 121, 213 A. 2d. 843 (1965); *Wanner* v. *County School Board* (Arlington), 357 F. 2d 452, 455 (4th Cir. 1966). Cf. *Brooks* v. *Beto*, Civil No. 22809, 5th Cir., July 29, 1966, overruling *Collins* v. *Walker*, 335 F. 2d 417 (5th Cir. 1964), cert. denied, 379 U.S. 901 (1964); *Tancil* v. *Woolls*, 379 U.S. 19 (1964), affirming per curiam, *Hamm* v. *Virginia State Board of Elections*, 230 F. Supp. 156, 157 (E.D. Va. 1964).

It follows, *a fortiori*, that a school board may take race into account in undoing past discrimination by school authorities. In *Wanner* v. *County School Board* (Arlington, *supra*, the school board had adopted a plan to desegregate the county's all-Negro junior high school, which had remained "as it was contrived, a Negro enclave entirely surrounded by white school zones" (*Id.* at 453). Three junior high school districts were combined to form two new districts, each of which would have a student enrollment 75 percent white and 25 percent Negro. The school board had knowledge of racial imbalance in the student population and was aware that the new plan would reduce the imbalance (*Id.* at 454). The district court held that ". . . racial balance was the prime criterion used in redrawing the boundaries and that considerations based on race are constitutionally impermissible . . ." (*Id.* at 453). Reversing, the Court of Appeals for the Fourth Circuit stated (357 F. 2d at 454): "If a school board is constitutionally forbidden to institute a system of racial segregation by the use of artificial boundary lines, it is likewise forbidden to perpetuate a system that has been so instituted. It would be stultifying to hold that a board may not move to undo arrangements artificially contrived to effect or maintain segregation, on the ground that this interference with the status quo would involve 'consideration of race.' When school authorities, recognizing the historic fact that existing conditions are based on a design to segregate the races, act to undo these illegal conditions—especially conditions that have been judicially condemned—their effort is not to be frustrated on the ground that race is not a permissible consideration. This is not the 'consideration of race' which the Constitution discountenances."

Title VI of the Civil Rights Act of 1964, which authorizes the withholding of Federal funds from public and private schools and school systems participating in Federal aid-to-education programs where the programs are operated in a racially discriminatory manner, states:

> SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[117]

The word "discrimination" in title VI is not defined. It can be argued, however, that in another title of the 1964 act, dealing specifically with school desegregation, Congress manifested an intent to exclude racial imbalance from the scope of title VI. Title IV provides that the Commissioner of Education is authorized to render technical assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools upon the request of local school officials (sec. 403).[118] The Commissioner also is authorized to make grants for in-service training of teachers to deal with, or for employment of specialists to advise on, problems incident to desegregation[119] (sec. 405). The word "desegregation" is defined in section 401 to mean "the assignment of students to public schools and within such schools without regard to their race, color, religion or national origin, but . . . shall not mean the assignment of students to public schools in order to overcome racial imbalance."[120]

Section 401(b) simply defines the term "desegregation" as it appears in the sections of title IV authorizing technical and financial assistance to desegregating school districts. Another section in title IV, however (sec. 407), which authorizes the Attorney General to bring school desegregation suits under certain specified conditions, contains a congressional disclaimer of intent to authorize Federal officials to require racial balance by the transportation of pupils, at least until it is clear that racial imbalance is unconstitutional.[121] Section 407(a)(2) provides that ". . . nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance or otherwise enlarge the existing power of the court to insure compliance with constitutional standards." The reference to "any official," as well as "any court," arguably suggests that in using the term "nothing herein," Congress meant "nothing in this act," rather than "nothing in title IV."[122]

Thus, the Commissioner of Education has taken the position that racial imbalance—not caused by purposefully discriminatory action of school officials—"is beyond the clear purview of the Civil Rights Act. . . ." [120] A recent amendment to the Elementary and Secondary Education Act of 1965, moreover, disclaims any Congressional intent to confer, by that statute, independent authority upon the Commissioner to require school authorities to correct racial imbalance. The amendment states: "Nothing contained in this Act shall be construed to authorize any department, agency, officer or employee of the United States . . . to require the assignment or transportation of students or teachers in order to overcome racial imbalance." [121]

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[117] 78 Stat. 252 (1964), 42 U.S.C. § 2000d–1 (1964). Title VI regulations issued by the Department of Health, Education, and Welfare (45 C.F.R. 80 *et seq.* (1964)) apply both to public and private schools and school systems. See 45 C.F.R. 80.4 (1964) which is applicable to elementary and secondary schools. Private schools participating in programs covered by title VI must file assurances of compliance with the State that receives the grant (telephone interview with Jules Mangel, Office of General Counsel, Department of Health, Education and Welfare). While HEW has issued detailed guidelines governing public elementary and secondary school education, 45 C.F.R. Part 181 (1966), as amended, however, it has not promulgated guidelines for private schools.

[118] 78 Stat. 246 (1964), 42 U.S.C. § 2000c–6 (1964).

[119] 78 Stat. 247 (1964), 42 U.S.C. § 2000c–4 (1964).

[120] 78 Stat. 246 (1964), 42 U.S.C. § 2000c(b) (1964).

[121] Sec. 407 authorizes the Attorney General "to initiate and maintain appropriate legal proceedings for relief" upon receipt of a complaint signed by a parent or group of parents alleging that his or their minor children "are being deprived by the school board of the equal protection of the laws." The Attorney General must believe that the complaint is meritorious and certify that the signers of the complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education. . . ." (sec. 407)

[122] See also the statement of then Senator Humphrey in debate (110 Cong. Rec. 12715 (1964); discussion in *United States* v. *Jefferson County School Board*, Civil No. 23345, 5th Cir., Dec. 29, 1966.

Under Title I of the Elementary and Secondary Education Act, the Commissioner of Education is extending financial assistance through States to school districts to meet the needs of educationally deprived children who live in attendance areas where there are high concentrations of children from low income families. Some school districts, such as Berkeley, are using Title I funds for projects, such as reduction of pupil-teacher ratios, which involve the transportation of Negro children to under-utilized majority white schools and thus have the incidental effect of reducing racial imbalance. The Department of Health, Education, and Welfare believes that racial imbalance contributes to educational deprivation, and encourages efforts to develop project activities which will tend to reduce such imbalance.[124a] A number of Title I projects have included "activities which attempted to reduce the effects of 'de facto' segregation as it affected the special educational needs of the identified, most educationally deprived children." [124b] In addition, certain experimental programs designed to relieve racial imbalance, such as the METCO program in Boston, are receiving Federal funds under Title III of the Elementary and Secondary Education Act.[124c]

Under Title IV of the Civil Rights Act of 1964, the Office of Education is assisting northern school systems which have taken corrective measures to remedy imbalance to provide consultation and in-service training to teachers to meet problems in areas such as counseling and guidance, remedial instruction, teaching attitudes, and inter-cultural understanding. This is being done on the theory that the word "desegregation" is defined in title IV, not as a transition from a segregated school system, but as "the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin"—a definition which includes situations in which there is no segregation. The Office of Education takes the position that while the "racial imbalance" clause in the title IV definition of "desegregation" prohibits giving assistance or encouragement to the bussing of children, the "pairing" of schools, the revision of attendance areas, or other action to overcome racial imbalance, once any of these actions has been taken by local authorities, the Office of Education is free to assist, through institutes and grants for consultation and in-service training, in meeting resulting racial problems to the same extent as where such problems have arisen from other causes.[125]

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[120] Address by Harold Howe II, "Education's Most Crucial Issue," before the Founders' Day Convocation, Teachers College, Columbia University, New York City, May 3, 1966, p. 6.

[121] Public Law 89–750, sec. 181 (1966).

[124a] Letter from Commissioner of Education Howe to Chief State School Officers, August 9, 1966; Statement of Office of Education re Impact of Title I, Elementary and Secondary Education Act of 1965 (P.L. 89–10) on De Facto Segregation; Manuscript, Transcript of Hearing before U.S. Commission on Civil Rights, Boston, Mass., Oct. 5, 1966, p. 479–481.

[124b] Statement of Office of Education, *supra*, p. 2.

[124c] Manuscript, Transcript of Hearing before U.S. Commission on Civil Rights, Boston, Mass., Oct. 5, 1966, p. 242.

[125] Memorandum "Title IV of the Civil Rights Act" from Mr. Alanson W. Willcox, General Counsel, DHEW, to the Secretary of the Department of Health, Education, and Welfare, Jan. 5, 1965. In the 89th Congress, a bill (S. 2928, 89th Cong. 2d sess.) was introduced by Senator Edward Kennedy of Massachusetts to amend Title IV of the Civil Rights Act of 1964 in order to authorize the Commissioner of Education to provide technical assistance and grants to school boards in support of programs designed to overcome racial imbalance in the public schools.

IV. The Need for a Congressional Remedy

The questions before Congress in taking corrective action are different from those before the courts. The courts have been troubled by the task of devising remedies to correct adventitious school segregation. It is conceivable, of course, that within the limitations of the judicial power to afford a remedy the courts may go further in finding a constitutional duty than they have been willing to go thus far. But judicial action affords less promise than congressional action for effective relief.

Litigation is an imperfect instrument for securing school desegregation. Experience with judicial enforcement of Southern school desegregation is instructive. Dissatisfaction with the progress which had been made through the courts was responsible in part for the enactment of title VI of the Civil Rights Act of 1964, which authorizes the Department of Health, Education, and Welfare to withhold Federal funds from school districts which fail to comply with its desegregation standards. A recent opinion of the Court of Appeals for the Fifth Circuit, which has jurisdiction over all of the deep South States, recites some of the reasons why litigation is an inadequate means of accomplishing school desegregation, and why congressional action is necessary:

> Case by case development of the law is a poor sort of medium for reasonably prompt and uniform desegregation. There are natural limits to effective legal action. Courts cannot give advisory opinions, and the disciplined exercise of the judicial function properly makes courts reluctant to move forward in an area of the law bordering on the periphery of the judicial domain. . . . The contempt power is ill-suited to serve as the chief means of enforcing desegregation. Judges naturally shrink from using it against citizens willing to accept the thankless, painful responsibility of serving on a school board . . . . School desegregation plans are often woefully inadequate; they rarely provide necessary detailed instructions and specific answers to administrative problems. And most judges do not have sufficient competence—they are not educators or school administrators—to know the right questions, much less the right answers. . . . But one reason more than any other has held back desegregation of the schools on a large scale. This has been the lack, until 1964, of effective congressional statutory recognition of school desegregation as the law of the land.[126]

Quoting from the House Report on the 1964 Act, which pointed out that progress in Southern school desegregation had been too slow and that national legislation was "required to meet a national need," the court concluded that Title VI "was necessary to rescue school desegregation from the bog in which it had been trapped for ten years." [127]

Resistance to the fulfillment of civil rights is likely to be much greater when such rights are recognized by the Federal courts alone than when they are recognized also by the national legislature. "More clearly and effectively than either of the other two coordinate branches of Government, Congress speaks as the Voice of the Nation." [128] A Supreme Court decision overturning the conviction of the sit-in demonstrators on the ground that the 14th amendment required the owners of places of public accommodation to serve Negroes without discrimination could not have commanded the same amount of public support as the public accommodations title of the Civil Rights Act of 1964.[129] The Voting Rights Act of 1965 produced far greater voluntary compliance throughout the South than the many Federal court decisions enjoining voting discrimination against Negroes which preceded it.[130]

Congressional action also would have the virtues of establishing a uniform standard, minimizing delay and relieving overburdened Federal courts of what, as the judicial history of Southern school desegregation discloses, is a burdensome responsibility.

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[126] *United States* v. *Jefferson County Board of Education*, Civil No. 23345, 5th Cir., Dec. 29, 1966, pp. 10–11.

[127] *Id.* at 11.

[128] *Id.* at 5.

[129] 42 U.S.C. 2000a (1964). See Cox, "Constitutional Adjudication and the Promotion of Human Rights," 80 Harv. L. Rev. 91 (1966).

[130] U.S. Commission on Civil Rights, *The Voting Rights Act . . . the First Months* 2, 8, 9 (1965).

The Court of Appeals for the Fifth Circuit recently recounted its experience in the last 10 years in reviewing school desegregation cases:

> The first school case to reach this court after *Brown* v. *Board of Education* was *Brown* v. *Rippey*. . . . Since then we have reviewed 41 other school cases, many more than once. The district courts in this circuit have considered 128 school cases in the same period. Reviewing these cases imposes a taxing, time-consuming burden on the courts not reflected in statistics. An analysis of the cases shows a wide lack of uniformity in areas where there is no good reason for variations in the schedule and manner of desegregation. . . . The lack of clear and uniform standards to govern school boards has tended to put a premium on delaying actions.[131]

Equally important, since the appropriate remedy may require substantial amounts of financial assistance—particularly where school construction is involved—Congress, with its power to appropriate money, is far better equipped than the courts to provide effective relief. Although the judiciary may have power to compel State or local officials to levy taxes in order to comply with the Constitution,[132] the courts could not provide the financial assistance needed to avoid the otherwise severe economic strains which such levies would impose upon local tax resources.

As the following discussion shows, Congress is empowered by the Constitution to provide a remedy.

V. The Power of Congress To Enact Legislation Eliminating Racial Isolation in the Schools

A. THE PREVENTIVE POWERS OF CONGRESS UNDER THE 14TH AMENDMENT

The equal protection clause of the 14th amendment provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." While the courts are available to vindicate 14th amendment rights, they do not exercise exclusive guardianship. Congress, given express authority under section 5 of the amendment "to enforce, by appropriate legislation, the provisions of . . . [the amendment]," shares that responsibility. Because, as will be shown, correction of racial isolation in the schools—adventitious or otherwise—is necessary to secure equal protection rights, congressional legislation to provide a remedy would be "appropriate legislation" under section 5.

In the October Term, 1965, the Supreme Court stressed the power and responsibility of Congress to enforce constitutional rights under the 14th and 15th amendments. As the former Solicitor General of the United States, Archibald Cox, pointed out in a recent issue of the Harvard Law Review, "the decisions call attention to a vast untapped reservoir of federal legislative power to define and promote the constitutional rights of individuals in relation to state government."[133] The decisions make it clear that section 5 of the 14th amendment is an affirmative grant which authorizes Congress to determine what legislation is needed to further the aims of the amendment.

In the first case, *South Carolina* v. *Katzenbach*,[134] the constitutionality of the Voting Rights Act of 1965 was in issue. This Act suspended the use of literacy tests and other devices applied in certain Southern States so as to discriminate against Negro voter registration applicants, in any State or county as to which the Attorney General determined that a test or device had been in force and the Director of the Census certified that less than 50 percent of the adult population had voted in the 1964 presidential election. The theory was that these "triggers" marked the areas in which there was reason to think that the tests might be employed in a racially discriminatory way; Congress therefore had power, according to the theory, to pass the statute under section 2 of the 15th amendment, which provides that "the Congress shall have power to enforce this article by appropriate legislation." South Carolina argued that this power is limited to the prevention or redress of illegal conduct. But the Court disagreed, stating that "Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting," and therefore was not confined to dealing with voting discrimination itself but could regulate or prohibit any conduct which created a danger of discrimination.[135]

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[131] *United States* v. *Jefferson County Board of Education*, Civil No. 23345, 5th Cir., Dec. 29, 1966, p. 17.

[132] See *Griffin* v. *Prince Edward County School Board*, 377 U.S. 218 (1964).

[133] Cox, "Constitutional Adjudication and the Promotion of Human Rights," 80 *Harv L. Rev.* 91, 99 (1966).

[134] 383 U.S. 301 (1966).

A similar holding was made with respect to the enforcement clause of the 14th amendment in *Katzenbach* v. *Morgan*.[136] The issue was the constitutionality of a section of the Voting Rights Act which has the effect of providing that no person who successfully has completed the sixth grade in a Puerto Rican School where instruction is in Spanish shall be denied the right to vote because of inability to read or write English.[137] Its main effect is to give the ballot to Spanish-speaking citizens who have moved from Puerto Rico to New York but would be barred from voting by New York's English literacy test.[138]

The Attorney General of the State of New York contended that section 4(e) could not be sustained as appropriate legislation to enforce the equal protection clause unless the judiciary decided that the application of the English literacy requirement prohibited by section 4(e) was forbidden by the equal protection clause itself.[139] The Court rejected this argument, stating:

> Neither the language nor history of sec. 5 supports such a construction. As was said with regard to sec. 5 in *Ex Parte Virginia*, 100 U.S. 339, "It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective." A construction of sec. 5 that would require a judicial determination that the enforcement of the State law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and responsibility for implementing the Amendment. It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge unconstitutional, or of merely informing the judgment of the judiciary by particularizing the "majestic generalities" of sec. 1 of the Amendment.[140]

The Court held that section 4(e) was appropriate legislation under section 5 of the 14th Amendment, concluding that section 5 conferred upon Congress:

> the same broad powers expressed in the Necessary and Proper Clause, Art. I, sec. 3, cl. 18, as constructed by Chief Justice Marshall for the Court in the classic case of *M'Culloch* v. *Maryland*, 4 Wheat 316, 421, 4 L ed 579, 605: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." [141]

"Correctly viewed", said the Court, "section 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth amendment." [142]

Similarly, in *United States* v. *Guest*,[143] six Justices of the Supreme Court indicated that Congress has the power, under section 5 of the 14th amendment, to reach actions of individuals designed to interfere with the attainment of 14th amendment rights, even though such individual action would not of its own force violate the amendment. Justice Brennan, speaking for himself and two other justices, characterized section 5 as "a positive grant of legislative power, authorizing Congress to exercise its discretion in fashioning remedies to achieve civil and political equality for all citizens." [144] See also the opinion of Mr. Justice Black in *Bell* v. *Maryland*.[145]

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[135] 383 U.S. at 324.

[136] 384 U.S. 641 (1966).

[137] Sec. 4(e), 42 U.S.C. 1973(e) (Supp. I, 1965).

[138] 384 U.S. at 644, 645.

[139] *Id.* at 648.

[140] *Id.* at 648, 649.

[141] *Id.* at 650. See also, *Ex parte Virginia*, 100 U.S. 391 (1880); *Strauder* v. *West Virginia*, 100 U.S. 303, 311 (1880); *Virginia* v. *Rives*, 100 U.S. 313, 318 (1880); *South Carolina* v. *Katzenbach*, 383 U.S. 301, 326 (1966) (15th amendment); *James Everard's Breweries* v. *Day*, 265 U.S. 545, 558–559 (1924) (18th amendment).

[142] 384 U.S. at 651.

[143] 383 U.S. 745 (1966).

Thus, one branch of the Court's opinion in the *Morgan* case sustained congressional nullification of New York's English literacy requirement on the ground that Congress might have viewed its own measure as adapted to furthering the aim of the equal protection clause to secure nondiscriminatory treatment by the Government. The Court pointed out that even if the literacy requirement did not itself deny equal protection, the practical effect of nullifying the requirement was to enfranchise large segments of New York's Puerto Rican community. "This enhanced political power," said the Court, "will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community. Section 4(e) thereby enables the Puerto Rican minority better to obtain 'perfect equality of civil rights and equal protection of the laws.' " [146]

Like the Puerto Rican who was disfranchised in New York, the Negro student who attends a racially isolated school is not likely to achieve "perfect equality of civil rights and equal protection of the laws," whether or not the racial isolation itself is a denial of equal protection. Corrective congressional action readily may be viewed as adapted to securing equal educational opportunity by eliminating the conditions which render the education received by most Negroes inferior to that afforded most white children. Such conditions involve, in part, the harmful effects upon attitudes and achievement which racial and social class isolation appear to have on Negro students.

But corrective congressional action also may be seen as a measure to enable Negroes, whose children now attend schools which, on the average, are more overcrowded and have less qualified teachers, more pupils per teacher, fewer library volumes per student, fewer science laboratories, and fewer advanced courses in science and language, to receive nondiscriminatory treatment in the provision of educational facilities. While the equal protection clause of its own force may require only that such disparities be eliminated, Congress, under the principles established in such recent decisions as *South Carolina* v. *Katzenbach* and *Katzenbach* v. *Morgan*, would be well within its discretion in concluding that such inequalities would be more firmly and fully uprooted by eliminating the underlying conditions, arising from the dichotomy between predominantly white middle-class schools—attended by children with well-educated parents who exercise strong influence on school boards—and predominantly Negro slum schools—attended by children with poorly educated parents burdened by problems of material existence and less influential in school board policy which produce the disparities.

B. THE POWER OF CONGRESS TO DECIDE THAT ADVENTITIOUS SEGREGATION VIOLATES THE 14TH AMENDMENT

Congress can and should conclude, moreover, that the equal protection clause of its own force invalidates adventitious school segregation.

To be sure, the majority of the courts which have dealt with this question have ruled otherwise.[147] But Congress may determine for itself what constitutes a violation of the 14th amendment; it need not accept the judgment of any particular court, nor the views of the majority of the courts which have ruled on the issue. Just as Congress may lead the courts under the commerce clause in forbidding certain kinds of State regulation, even though the courts have not done so of their own accord, so Congress, in exercising its discretionary powers under section 5 of the 14th amendment, may determine that certain conduct involves a denial of equal protection of the laws, whether or not the courts have so concluded.[148]

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[144] *Id.* at 784.

[145] 378 U.S. 226, 318–346 (1964).

[146] 384 U.S. at 652, 653.

[147] See discussion, *supra,* at 214–218.

[148] Indeed, Congress is the only body which the Constitution *expressly* authorizes to enforce the amendment.

(1) The Congressional Power To Define the Scope of the Equal Protection Clause

a. In the years immediately following the post-Civil War amendments, Congresses, which included many of the men who drafted and voted for the amendments, so construed their mandate. Although much of the civil rights legislation they enacted was procedural or remedial, it included provisions giving substance to the amendments. The 13th amendment—which contains an enforcement clause identical to the Fourteenth's—was implemented by the Civil Rights Act of 1866,[149] which purported to confer specific rights on the former slaves as an incident to their emancipation.[150] The following year, in the Peonage Abolition Act,[151] Congress defined "involuntary servitude" to include Mexican "peonage".[152] Congress attempted to give content to the 15th amendment, which contains a comparable enforcement clause, in the Enforcement Act of 1870,[153] portions of which were struck down.[154] One provision of that statute which still survives defines the scope of the constitutional exemption from racial discrimination in voting to include "any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality or other territorial subdivision." [155]

Definitional content also was given to the 14th amendment by post-Civil War Congresses. The Enforcement Act of 1870—enacted under the "appropriate legislation" clause of the 14th amendment—construed the general provisions of the "equal protection," "due process," and "privileges and immunities" clauses of the 14th amendment to cover the rights "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to the full and equal benefit of all laws and proceedings for the security of persons and property . . . .[156] Although some congressional efforts to extend equal protection were ruled excessive,[157] others have survived, such as section 3 of the Act of 1871, which legislatively determined that a State's inability to protect the constitutional rights of "any portion or class" of its inhabitants in time of domestic violence "shall be deemed a denial by such State of the equal protection of the laws".[158]

In 1875, Congress gave further content to the equal protection clause by prohibiting racial discrimination in the selection of juries—again reducing "the majestic generalities of the 14th amendment . . . to a concrete statutory command." [159] Decisions of the Supreme Court sustaining this legislation accord great respect to the congressional determination that racial discrimination in jury selection offends the equal protection clause [160]—a conclusion not compelled by the historical evidence of the intent of the framers.[161] The Court's deference to the congressional judgment is reflected in the following passage from the opinion of the Court in *Ex parte Virginia:*

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[149] 14 Stat. 27 (1866).

[150] *Civil Rights Cases,* 109 U.S. 3, 33 (1883) (dissenting opinion).

[151] 14 Stat. 546 (1867), 18 U.S.C. § 444 (1952).

[152] See *Clyatt* v. *United States,* 197 U.S. 207 (1905); *Pollock* v. *Williams,* 322 U.S. 4 (1944).

[153] 16 Stat. 140 (1870).

[154] *United States* v. *Reese,* 92 U.S. 214 (1876); *James* v. *Bowman,* 190 U.S. 127 (1903).

[155] See 42 U.S.C. § 1971(a) (1952).

[156] 14 Stat. 27 (1870). See 42 U.S.C. §§ 1981, 1982 (1952). *Buchanan* v. *Warley,* 245 U.S. 60 (1917); *Shelley* v. *Kraemer,* 334 U.S. 1 (1948).

[157] See sec. 2 of the Ku Klux Klan Act of April 20, 1871 (17 Stat. 13), invalidated in *United States* v. *Harris,* 106 U.S. 629 (1883), and *Baldwin* v. *Franks,* 120 U.S. 678 (1887); and secs. 1 and 2 of the Civil Rights Act of 1875 (18 Stat. 335, 336), declared unconstitutional in the *Civil Rights Cases,* 109 U.S. 3 (1883). The rationale of these cases—that sec. 5 of the 14th amendment authorizes Congress only to correct violations of the Amendment by States, and does not empower Congress under any circumstances to reach actions of individuals, has been discredited by the opinions of the six justices in *Guest,* 383 U.S. 745 (1966).

[158] 17 Stat. 13, 14 (1871), 10 U.S.C. 333 (1952).

[159] 18 Stat. 336 (1875); 18 U.S.C. 243 (1952); *Fay* v. *New York,* 332 U.S. 261, 282 (1947).

[160] *Strauder* v. *West Virginia,* 100 U.S. 303 (1880); *Ex parte Virginia,* 100 U.S. 339 (1880).

> All of the amendments derive much of their force from [the enforcement sections]. It is not said the *judicial power* of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. It is not said that branch of the government shall be authorized to declare void any action of a State in violation of the prohibitions. It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective. Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion if not prohibited, is brought within the domain of congressional power.[162]

b. In *Katzenbach* v. *Morgan,* the Supreme Court specifically ruled that Congress may determine for itself that particular State action involves a violation of the 14th amendment, and upheld a congressional act which invalidated a State law on that ground even though a decision of a Federal court had upheld the constitutionality of the very State law in issue. In the *Morgan* case the Supreme Court sustained section 4(e) of the Voting Rights Act on the alternative theory that Congress reasonably could have concluded that the New York requirement was an invidiously discriminatory voter qualification repugnant to the equal protection clause. Thus, the Court said that "the result is no different if we confine our inquiry to the question whether section 4(e) was merely legislation aimed at the elimination of an individious discrimination in establishing voter qualifications." [163] Continuing, the Court declared:

> We are told that New York's English literacy requirement originated in the desire to provide an incentive for non-English-speaking immigrants to learn the English language and in order to assure the intelligent exercise of the franchise. Yet Congress might well have questioned, in light of the many exemptions provided, and some evidence suggesting that prejudice played a prominent role in the enactment of the requirement, whether these were actually the interests being served. Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise. Finally, Congress might well have concluded that as a means of furthering the intelligent exercise of the franchise, an ability to read or understand Spanish is as effective as ability to read English for those to whom Spansh-language newspapers and Spanish-language radio and television programs are available to inform them of election issues and governmental affairs.[164]

"[I]t is enough", said the Court, "that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the equal protection clause." [165]

By parity of reasoning, the Supreme Court would not disturb a congressional judgment that, to secure the guarantees of the 14th amendment to Negro children, it is necessary to correct segregation—adventitious or otherwise—in the schools and to override State laws or policies which stand as obstacles to the accomplishment of that objective. The Court would overturn such a congressional determination only if it failed to "perceive a basis upon which Congress might predicate a judgment . . ." [166] that such segregation contravened the equal protection clause. As the *Morgan* case demonstrates, the validity of a congressional judgment that adventitious segregation in the public schools violates the equal protection clause does not depend upon whether the Supreme Court has invalidated or would invalidate such segregation. Nor does it depend upon the holdings of particular lower Federal or State courts which have passed upon the question. In *Morgan,* a decision of a New York Federal court had held valid the very New York English literacy requirement which was nullified by section 4(e).[167]

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[161] See Frank and Munro, "The Original Understanding of 'Equal Protection of the Laws,'" 50 Colum. L. Rev. 131, 145 (1950); Bickel, "The Original Understanding and the Segregation Decision," 69 Harv. L. Rev. 1, 56, 64–65 (1955).

[162] 100 U.S. at 345, 346.

[163] 384 U.S. at 653, 654.

[164] *Id.* at 654, 655.

[165] *Id.* at 656.

[166] *Ibid.*

If anything, the power of Congress to adopt corrective measures is stronger than it was in *Morgan.* The virtues of the neighborhood school policy are far more debatable than the clear interest of New York State in maintaining an electorate literate in the English language. In *Morgan,* there was virtually no legislative record to support the congressional determination that section 4(e) was necessary to secure 14th amendment rights. The facts in the present report and in the survey of the Office of Education, on the other hand, afford ample basis for concluding that adventitious school segregation has damaging effects on Negro children. The legal basis for a congressional determination that such segregation violates the equal protection clause, moreover, is much clearer than the legal basis for the hypothesized congressional determination that New York's English literacy test infringed the equal protection ban—a determination which would have required Congress to disregard or distinguish a Supreme Court decision upholding the constitutionality of a North Carolina English literacy test.[168]

(2) *The Question of State Action*

The 14th amendment of its own force protects the individual only against action by the State; "individual invasion of individual rights is not the subject matter of the amendment." [169] But it is plainly the agents of the State and of its political subdivisions who select school sites, define attendance areas, and assign Negro children to schools in which they are racially isolated.[170] As reflected in chapter 2 of this report, moreover, school boards make many discretionary decisions which affect the degree of racial isolation in the schools.

The responsibility is not the State's alone. Private discrimination (along with governmental action [171]) is instrumental in confining the Negro to the ghetto. Were it not for such confinement the neighborhood school policy might not result in racial segregation. But ". . . the involvement of the State need [not] be exclusive. . . . In a variety of situations the Court has found State action of a nature sufficient to create rights under the equal protection clause even though the State action was only one of several cooperative forces leading to the constitutional violation." [172]

(3) *The Rationale of Brown* v. *Board of Education*

In *Brown* v. *Board of Education,*[173] the Supreme Court ruled that State statutes compelling or expressly permitting the assignment of students on the basis of race are unconstitutional. The rationale of the *Brown* opinion, however, was not that the States involved had classified invidiously by imposing racial separation in the schools. On the contrary, the entire thrust of the opinion is that such segregation produces schools which are unequal, and that under the equal protection clause of the 14th amendment, public education, ". . . where the State has undertaken to provide it, is a right which must be made available to all on equal terms." [174]

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[167] *Camacho* v. *Rogers,* 199 F. Supp. 155 (S.D.N.Y. 1961).

[168] *Lassiter* v. *Northampton Election Board,* 360 U.S. 45 (1959).

[169] *The Civil Rights Cases,* 109 U.S. 3, 11 (1883).

[170] Indeed, in all but two States, attendance of a child at the assigned school is not even a voluntary matter. Every State save Mississippi and South Carolina has a compulsory school attendance law. While theoretically such a law may be satisfied by admission to an accredited private school, to the vast majority of Negro children—unable to afford the tuition at a private school—the compulsory attendance law is tantamount to a law compelling attendance at the public schools to which they are assigned. See Wright, "Public School Desegregation: Legal Remedies for De Facto Segregation," 16 W. Res. L. Rev. 478, 488 (1965).

[171] See *infra.* at 235–237.

[172] *United States* v. *Guest,* 383 U.S. 745, 755–56 (1966). See also *Shelley* v. *Kraemer,* 334 U.S. 1 (1948); *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1960); *Lombard* v. *Louisiana,* 373 U.S. 267 (1962); *Griffin* v. *Maryland,* 378 U.S. 130 (1963).

[173] 347 U.S. 483 (1954).

The constitutional duty of a State to provide equal educational opportunity did not originate with the *Brown* decision. It was the basis of the many decisions rendered by the Supreme Court and by lower Federal courts in the three generations following *Plessy* v. *Ferguson,*[175] holding violative of the equal protection clause inequalities between Negro and white schools in buildings and other physical facilities, course offerings, length of school terms, transportation facilities, extracurricular activities, cafeteria facilities, and geographical conveniences.[176] In *Missouri ex rel. Gaines* v. *Canada,*[177] and in *Sipuel* v. *Board of Regents,*[178] the Supreme Court invalidated school segregation where it was shown that the quality of the facilities provided for Negroes was unequal to the quality of the facilities afforded whites. The decisions were concerned with tangible inequalities.

But in 1950—four years before *Brown*—the Court made it clear that in determining whether equal educational opportunities have been afforded, the totality of the educational experience must be considered, and that this experience encompasses more than the brick and mortar of the educational institution attended and other tangible factors. In *Sweatt* v. *Painter,*[179] the Court ruled that Texas could not provide Negro law students with equal educational opportunity if they were confined to a segregated law school. Although it noted that the physical facilities at the University of Texas Law School were superior to those at the Negro law school, the Court stressed that "what is more important" is the fact that the University of Texas Law School "possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school." [180] Among the vital immeasurable ingredients which the Court considered in comparing the white school with the separate Negro institution were the comparative "standing in the community" of the two institutions and the exclusion from the Negro institution of members of racial groups which included most of the lawyers, judges, witnesses, jurors, and other public officials with whom the Negro law student would have to deal when he got out of law school.[181]

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[174] *Id.* at 493. See, e.g., *Sweatt* v. *Painter,* 339 U.S. 629 (1950); *McLaurin* v. *Oklahoma State Regents for Higher Education,* 339 U.S. 637 (1950).

[175] 163 U.S. 537 (1896).

[176] See, e.g., *Sipuel* v. *Board of Regents,* 332 U.S. 631 (1948); *Missouri ex rel. Gaines* v. *Canada,* 305 U.S. 337 (1938); *Gong Lum* v. *Rice,* 275 U.S. 78 (1927); *Carter* v. *School Board,* 182 F. 2d 531 (4th Cir. 1950); *Davis* v. *County School Board,* 103 F. Supp. 337 (E.D. Va. 1952), rev'd sub nom. *Brown* v. *Board of Education of Topeka,* 347 U.S. 483 (1954); *Butler* v. *Wilemon,* 86 F. Supp. 397 (N.D. Tex. 1949); *Pitts* v. *Board of Trustees,* 84 F. Supp. 975 (E.D. Ark. 1949); *Freeman* v. *County School Board,* 82 F. Supp. 167 (E.D. Va. 1948), aff'd, 171 F. 2d 702, (4th Cir. 1948). See also Leflar and Davis, "Segregation in the Public Schools—1953," 67 Harv. L. Rev. 377, 430–35 (1954); Howoritz, "Unseparate but Unequal—The Emerging Fourteenth Amendment Issue in Public School Education," 13 UCLA L. Rev. 1147, 1149 (1966).

[177] 305 U.S. 337 (1938).

[178] 332 U.S. 631 (1948).

[179] 339 U.S. 629 (1950).

[180] *Id.* at 634.

[181] The Court said:

> Moreover, although the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85 percent of the population of the State and include most of the lawyers, witnesses, jurors, judges, and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School. *Ibid.*

Similarly, in *McLaurin* v. *Oklahoma State Regents for Higher Education*,[182] the Court required that a Negro admitted to a white graduate school be treated like all other students not segregated within the school. Again the Court relied upon "intangible considerations," including "his ability . . . to engage in discussions and exchange views with other students. . . ."[183] The right of the Negro student to associate freely with his white peers was deemed indispensable to equal educational opportunity.

The Court in *Brown* ruled that school segregation, which it had invalidated in *Sweatt* and *McLaurin* upon the particular showing of harm demonstrated in those cases, was universally detrimental to Negro children. Quoting from those cases passages in which the Court had stressed the intangible considerations which go into the equal education equation, including association with white students, the Court in *Brown* declared that "such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."[184] The Court added that "the effect of this separation on their educational opportunities" was "well stated" in the following finding of the lower court in one of the cases which the Supreme Court was reviewing (the Kansas case):

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.[185]

The emphasis in *Brown* is on the importance to the Negro child of association with white contemporaries—a need which it found even greater than the need of the law student in *Sweatt* and the graduate student in *McLaurin*. It is difficult to believe that the Court in *Brown* was attributing all of the psychological and motivational disadvantage which it cited to the circumstances of State compulsion.[186] As the court in *Blocker* v. *Board of Education* (Manhasset) said with regard to elementary school children:

> We are dealing with children in Grades K through 6; i.e., from age 5 to 11. They see themselves living in an almost entirely Negro area and attending a school of similar character. If they emerge beyond the confines of the Valley area into the District at large, they enter a different world inhabited only by white people. They are not so mature and sophisticated as to distinguish between the total separation of all Negroes pursuant to a mandatory or permissive State statute based on race and the almost identical situation prevailing in their school district. The Valley situation generates the same feeling of inferiority as to their status in the communty as was found by the Supreme Court in *Brown* to flow from substantially similar segregation by operation of State law.[187]

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[182] 339 U.S. 637 (1950).

[183] *Id.* at 641.

[184] 347 U.S. at 494.

[185] *Ibid.*

[186] In deciding that "separate facilities are inherently unequal," the Court in *Brown* found its opinion "amply supported by modern authority," 347 U.S. 483, 494, n. 11. Four of the six references contain findings not limited to *de jure* segregation. Frazier, *The Negro in the United States* 674–81 (1949); Witmer & Kotinsky, *Personality in the Making* 136–37 (1952); Clark, "Effect of Prejudice and Discrimination on Personality Development, Children's Bureau, Federal Security Agency" (1950) (mimeographed); Brameld, "Educational Costs," in *Discrimination and National Welfare* (MacIver ed. 1949).

[187] 226 F. Supp. 208, 229 (E.D. N.Y. 1964). See also *Booker* v. *Board of Education*, 45 N.J. 161, 212 A. 2d 1, 5 (1965); *Morean* v. *Board of Education of Montclair*, 42 N.J. 237, 200 A. 2d 97 (1964); In re *Skipwith*, 14 Misc. 2d 325, 180 N.Y.S. 2d 852, 866 (Dom. Rel. Ct. 1958).

In *Brown*, the Court recognized that segregation, even absent sanction by statute, harms Negro children. The passage it quoted with approval from the lower court opinion in the Kansas case acknowledged the "detrimental effect" of "segregation of white and colored children in public schools" upon the Negro children, stressing only that "the impact is greater when it has the sanction of law." [188]

The facts in this report support the view that school segregation of Negro and white students—with or without the sanction of law—harms Negro students [189] by adversely affecting both their attitudes and achievement. Negro pupils attending predominantly Negro schools tend to have lower educational aspirations, more frequently feel that they are unable to control their own destinies, have a poorer self-image, and have teachers with lower expectations, than similarly situated Negro students attending predominantly white schools. These differences are associated partly with differences in the respective social class levels of the average predominantly Negro and the average predominantly white school—differences which, given the relatively small Negro middle class—cannot be erased without school integration.

Beyond this, however, a major factor in these differences is racial isolation itself, even when social class factors are held constant. Just as segregation imposed by law was held in *Brown* to create feelings of inferiority among students affecting their motivation and ability to learn, so there is evidence that adventitious segregation is attended by a stigma which has comparable effects. The superior "standing in the community" of the white law school in *Sweatt* v. *Painter* [190]—a superiority which the Court ruled in conflict with the equal protection clause—is echoed in the superior reputation of predominantly white elementary and secondary schools as compared to similar institutions which are predominantly Negro and in the eyes of the community as well as in the eyes of the teachers and students, stigmatized. The deprivation of educational contact with the majority group which the Court deemed so important in *Sweatt* because that group included most of the lawyers, jurors, judges, witnesses and officials with whom a lawyer inevitably deals, finds its analogue in the limited opportunity for educational association with members of the majority group available to Negro students in predominantly Negro elementary or secondary schools. Lack of contact with white persons impairs the ability of the Negro student to relate to members of a group with whom he later may have to associate to achieve success in the job market and in other areas of life.

(4) *The Responsibility of the State for the Denial of Equal Educational Opportunity*

The inequality of educational opportunity which Negroes receive in predominantly Negro public schools—inequality which, as has been shown, is attributable in part to "State action"—violates the equal protection clause if, in the circumstances, the State fairly can be said to be responsible for the inequality.[191] To resolve this issue, it it not enough to inquire into the motives of the State and local school authorities. A discriminatory motive may be relevant in establishing a violation of the equal protection clause, but it is not a prerequisite.

It long has been held that the validity of a statute may be, and traditionally is, "tested by its operation and effect." [192] A law nondiscriminatory on its face may be grossly discriminatory in its operation.[193] Thus, discriminatory motive has not been an issue in the Supreme Court's invalidation of statutes weighing more heavily on poor persons than on persons of means.[194] In ruling that the imposition of a poll tax was violative of the equal protection clause, the Court in *Harper* v. *Virginia State Board of Elections,*[195] looked not to the motive of the tax but to its impact on the poor. In *Baker* v. *Carr*[196] where the Court took jurisdiction in a reapportionment case, the Court was concerned not with the motives of the State legislature, but with its failure, over a period of 60 years, to reapportion seats in the legislature notwithstanding shifts in population which produced an imbalance in the allocation of those seats—a situation comparable to the inaction of school authorities, in the face of population shifts producing changes in the racial composition of neighborhoods, which frequently is instrumental in intensifying racial imbalance in the schools.[197]

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[188] 347 U.S. at 494 [Emphasis added].

[189] See chap. III of this report.

[190] 339 U.S. at 634.

[191] *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 721 (1961); *Shelley* v. *Kraemer*, 334 U.S. 1, 13 (1948).

[192] *Douglas* v. *California*, 372 U.S. 353 (1963); *Near* v. *Minnesota*, 283 U.S. 697, 708 (1931); *Griffin* v. *Illinois*, 351 U.S. 12, 17, n. 11 (1956); *Guinn* v. *United States*, 238 U.S. 347 (1915); *Bailey* v. *Alabama*, 219 U.S. 219, 244 (1911); *Home Insurance Co.* v. *New York*, 134 U.S. 594, 598–599 (1890); *Henderson* v. *Mayor of New York*, 92 U.S. 259, 268 (1876).

[193] *Griffin* v. *Illinois*, *supra*; *Guinn* v. *United States*, *supra*; *Lane* v. *Wilson*, 307 U.S. 268 (1939); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960).

It would be a strange rule which would demand a showing that an administrative rule or policy unequally affecting a particular class of people is the product of a discriminatory purpose, even though a discriminatory purpose is not a prerequisite to a determination that a challenged statute contravenes the equal protection clause. As a Federal court said in another context, "The Constitution is made of sturdier stuff."[198] Thus, in invalidating a transfer provision in a desegregation plan, the Supreme Court said that "no official transfer plan *or provision* of which racial segregation is the inevitable *consequence* may stand under the 14th amendment,"[199]

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[194] See, *e.g., Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Douglas* v. *California,* 372 U.S. 353 (1963).

In *Rinaldi* v. *Yeager,* 384 U.S. 305 (1966), a prisoner serving a sentence was allowed to file an appeal in forma pauperis and was furnished a transcript. The appeal was unsuccessful. Acting under New Jersey law, prison officials withheld his prison pay to reimburse the county for the cost of the transcript. Without finding that the law was motivated by a discriminatory purpose, the Supreme Court found a violation of equal protection in that New Jersey did not impose this financial burden upon all convicted defendants whose appeals had been unsuccessful. The burden was not placed on defendants who received a suspended sentence, who were placed on probation or who were sentenced to pay a fine.

In another recent case, *Baxstrom* v. *Herold,* 383 U.S. 107 (1966), the petitioner was convicted of second degree assault and sentenced to 2½ to 3 years in prison. He was certified insane by a prison physician and sent to a State hospital. After the expiration of his sentence he was kept at the same hospital. The Supreme Court held that the petitioner was denied equal protection of the laws by the statutory procedure under which his commitment was continued at the institution for the mentally ill. The Court pointed out that he was "civilly committed at the expiration of his penal sentence without the jury review available to other persons civilly committed in New York" and he was committed to an institution for the dangerously mentally ill "beyond the expiration of his prison term without a judicial determination that he . . . [was] dangerously mentally ill such as that afforded to all so committed except those . . . serving the expiration of a penal sentence." The Court said that the State could not arbitrarily withhold the review proceeding, generally available, from some. The unequal operation of the statute was sufficient to sustain a violation of equal protection without any finding of intentional discrimination.

[195] 383 U.S. 663 (1966).

[196] 369 U.S. 186 (1962).

[197] See also, *Reynolds* v. *Sims,* 377 U.S. 533 (1964); *Gray* v. *Sanders,* 372 U.S. 36 (1963); *Wesberry* v. *Sanders,* 376 U.S. 1 (1964). In *Hearne* v. *Smylie,* 225 F. Supp. 645 (D. Idaho 1964), a Federal district court held that the Idaho Constitution and statutes "providing for the apportionment and manner of election of State legislators" did not violate the Fourteenth Amendment because, among other reasons, the State Legislature did not pass the legislation with any intent to discriminate (*Id.* at 650, 651). The U.S. Supreme Court reversed per curiam, 378 U.S. 563 (1964), citing *Baker,* 369 U.S. 186 (1962) and *Reynolds, supra.* In *Hornsby* v. *Allen,* 326 F. 2d 605, 611 (5th Cir. 1964), the Fifth Circuit pointed out that in *Baker* v. *Carr,* "the gist of the complaint was merely a denial of equal protection through gradual shifts in population, although it was alleged that the original 1901 apportionment was arbitrary and capricious. Hence it is at least doubtful that an allegation of an intentional and purposeful discrimination is necessary to sustain civil rights jurisdiction, even where founded on a denial of equal protection."

[198] *Cf. Blocker* v. *Board of Education,* (Manhasset) 226 F. Supp. at 223.

[199] *Goss* v. *Board of Education,* 373 U.S. 683, 689 (1963).

Fairness may require that a governmental official who, without malice, has created an unreasonable classification, should not be held liable in damages.[380] Similarly, it may be unfair to impose criminal punishment upon a public official unless he has been guilty of intentional misconduct.[381] But as one commentator has noted, "A constitutional guarantee of equal treatment at the hands of government should not be rendered ineffective because State administrative officials who make classifications are not malicious but only bumbling." [382]

Under recent Fifth Circuit decisions, where Negroes constitute a significant element of the community, the jury commissioners are under the duty of consciously including Negroes on the venires. The logical implication is that the constitutional validity of a juror selection technique will be determined by its *effects*, i.e., whether Negroes are fairly represented on juries, and will not depend upon a showing of a discriminatory purpose.[383]

Similarly, speaking of the extent to which the 14th and 15th amendments reach primary election machinery prescribed by party rule after repeal of a State's primary laws, the United States Court of Appeals for the Fourth Circuit stated that "No election machinery can be upheld if its purpose *or effect* is to deny to the Negro, on account of his race or color, any effective voice in the government of his country or the State or community wherein he lives." [384]

State courts also have indicated that administrative actions of public officials may violate the equal protection clause because of their discriminatory effect even in the absence of a showing of discriminatory purpose. In *In re Skipwith*,[385] the court held that Negro students attending a predominantly Negro school were denied equal protection of the laws when it was found that their school had a substantially smaller proportion of regularly licensed teachers than white schools. The court stated that the discriminatory staffing had resulted from voluntary selection of schools by teachers. But the court held the Board of Education legally responsible for the inequity since it had "done substantially nothing to rectify a situation it should never have allowed to develop . . . and with which it has had ample time to come to grips . . . ." [386] The court did not find, and did not look for, a discriminatory purpose.[387]

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[380] See *Snowden* v. *Hughes*, 321 U.S. 1 (1944).

[381] See *Screws* v. *United States*, 325 U.S. 91 (1945).

[382] Horowitz, *Unseparate But Unequal—The Emerging Fourteenth Amendment Issue in Public School Education*, 13 UCLA L. Rev. 1147, 1152 (1966). The author notes that although in earlier decisions the Supreme Court, considering attacks on tax assessments under the equal protection clause, articulated a requirement that intentional discrimination be proved, *Sunday Lake Iron Co.* v. *Township of Wakefield*, 247 U.S. 350 (1918) and *Mackay Telegraph and Cable Co.* v. *City of Little Rock*, 250 U.S. 94 (1919), the Court's discussion in those cases ranged well beyond a determination that no discriminatory purpose had been established and in effect inquired into the reasonableness of the classifications which the State officials had made by the assessments. The *Sunday Lake* and *Mackay* cases, as well as *Snowden* v. *Hughes*, *supra*, moreover, each were concerned with State action which allegedly deprived an individual rather than a class, of equal protection. The court may have been concerned with the workability of a rule which required a State to consider the impact of legislation upon the particular circumstances of every affected individual, as distinguished from its effect on classes of similarly situated persons. Unlike a tax assessment, a school-assignment policy is a rule of general applicability, which cannot logically be distinguished from a statute in determining whether a discriminatory purpose is a prerequisite to its invalidity under the equal protection clause.

[383] *Brooks* v. *Beto*, 366 F. 2d 1 (5th Cir. 1966), *Mack* v. *Walker*, 2-3, Civ. No. 21993, 5th Cir., Sept. 26, 1966.

[384] *Rice* v. *Elmore*, 165 F. 2d 387, 392 (4th Cir. 1947) cert. denied, 333 U.S. 875 (1948) (emphasis added). See also, *Baskin* v. *Brown*, 174 F. 2d 391 (4th Cir. 1949).

[385] 14 Misc. 2d 325, 180 N.Y.S. 2d 852 (Dom. Rel. Ct. 1958).

[386] *Id.* at 343, 180 N.Y.S. 2d at 871.

[387] Cf. *People* v. *Collins*, 47 Misc. 2d 210, 261 N.Y.S. 2d 970 (Orange County Ct. 1965), holding that an indigent defendant is denied equal protection of the laws when upon conviction, a judge sentences him either to pay a fine or be imprisoned. The issue in *Collins*, as it was with the challenged administrative action in *Skipwith*, was one of effect, not motive. Cf. *Rice* v. *Elmore*, 165 F. 2d 387 (4th Cir. 1947) cert. denied, 333 U.S. 875 (1941). Because of their poverty, indigent defendants effectively are denied the alternative of paying a fine.

It may be argued that the equal protection clause does not invalidate every act of the State which falls more heavily on one group than upon another. For example, a State may apply racially neutral qualifications for admission to the practice of medicine, which affect all unqualified applicants, white and Negro, in the same way, but which disadvantage the Negro not because he is Negro but because he lacks the requisite training. But there are important distinctions between this case and racial isolation in the schools. In the case cited, it is the characteristics of the individual affected which makes the law bear more heavily upon him. In the case of the racially isolated school, it is the characteristic of the school to which the individual is assigned by the State, i.e., the racial composition of that school, which creates the unequal burden.

In the case cited, moreover, the harm to the Negro occurs not because of his race but because of other factors. By contrast, attendance at a predominantly Negro school harms a Negro child, at least in part, because of his race. A white child similarly situated in all nonracial respects, and required to attend the same school, would not be affected in the same way. Thus, even where racial considerations play no part in the purpose or motivation of the school board's policy, or the means chosen to implement it, the operative effect of that policy is racially discriminatory in a literal sense—contrary to the historic purposes of the 14th amendment.

(5) *The Supremacy of the 14th Amendment Over Conflicting State Policies*

a. If rights under the equal protection clause are being denied or require vindication, Congress can provide a remedy. It is immaterial that there may be a rational basis for the policy that the State is following in producing the inequality.

Thus, the constitutional question does not depend on whether the neighborhood school policy is rational. Rationality cannot validate the inequality of educational opportunity which the neighborhood school perpetuates. Where the State grants a right of fundamental importance, it must grant the right equally to all persons within its jurisdiction. A State imposed inequality respecting such a right cannot be justified on the ground that the policy behind the inequality is reasonable.[208]

There can be no serious dispute concerning the fundamental importance of education. As the Supreme Court said in *Brown*, "in these days, it is doubtful that any

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[208] *Reynolds* v. *Sims*, 377 U.S. 533 (1964) (right to vote in a State election); *Griffin* v. *Illinois*, 351 U.S. 12 (1956) (right of indigent defendent to adequate appellate review); *Douglas* v. *California*, 372 U.S. 353 (1963) (right of indigent defendant to assistance of counsel on appeal); *Rinaldi* v. *Yeager*, 384 U.S. 305 (1966); *Carrington* v. *Rash*, 380 U.S. 89 (1965); *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966); *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942).

In *Reynolds* v. *Sims*, 377 U.S. 533, 581 (1964), the Supreme Court, having stressed the "fundamental" nature of the right to vote, and having emphasized that the case, like *Skinner* v. *Oklahoma*, 316 U.S. 535, "touche[d] a sensitive and important area of human rights," 377 U.S. at 561, said: "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired." In the following other cases involving important rights, the Court has held repugnant to the 14th amendment obviously rational State policies:

In *Griffin* v. *Illinois*, 351 U.S. 12 (1956), the Court struck down a State policy of refusing to provide a trial transcript to an indigent defendant for purposes of a criminal appeal. The rational basis of that policy was to expend available funds in the most effective way by providing transcripts to indigents only in more serious cases.

Douglas v. *California*, 372 U.S. 353 (1963) invalidated a California policy of appointing counsel for indigent defendants who sought to appeal only when the appellate court concluded after examining the record that there was sufficient reason to provide counsel. The rational basis for that policy was to distinguish between frivolous and non-frivolous appeals in the expenditure of public funds for the appointment of counsel.

In *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966), where the poll tax was held unconstitutional, a minority of the Court pointed out that there was a rational basis for the tax in the State's desire to collect revenue and its belief child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Just as it subsequently held with respect to the right to vote in a State election and the right to appeal a criminal prosecution, the Court, in *Brown* held that the right to an education, "where the state has undertaken to provide it, is a right which must be made available to all on equal terms." [209]

b. Thus, historical vintage cannot afford a justification for infringement of the right to equal educational opportunity. Some courts, like the district court in *Bell*, have asserted that "the neighborhood school which serves the students within a prescribed district is a long and well established institution in American public school education." [210] Even if this claim were true (but see infra) it could not validate inequality of educational opportunity resulting from application of the neighborhood school policy. As Mr. Justice Frankfurter observed in *Cooper* v. *Aaron*, "local customs, however hardened by time, are not decreed in heaven." [211] And as one court has said: "The neighborhood school policy certainly is not sacrosanct. It is valid only insofar as it is operated within the confines established by the Constitution." [212] In the Maryland reapportionment case the Supreme Court rejected the view that ". . . considerations of history and tradition . . . provide a sufficient justification for the substantial deviations from population-based representation" in both houses of the Maryland Legislature which the Court held violative of the equal protection clause." [213] Similarly, in holding departures from population-based representation in the Colorado Senate repugnant to the equal protection guarantee, the Court refused to accept the contention that historical considerations afforded adequate justification for the substantial disparities.[214]

In any event, history discloses no consistent pattern under which children have been assigned to schools in their neighborhoods. For example, in 1872, a Negro parent brought suit in State court to require the Albany School Board to admit his child to the school nearest his home. The board demanded that the child attend a more distant, all-Negro school. The court declared:

> Now it is to be observed that in Albany there are no school districts, unless the whole city is one district. In the country, as is well known, there are school districts, and the children residing in each district are entitled to attend the public schools therein. But it was not claimed by the relator that there is any law making a certain part of this city the district belonging to a particular school. I am unable to find such a law. No school districts have existed here for many years, so far as I can judge by the statutes.[215]

Upholding the power of the school board to establish racial attendance areas, the court observed that "The schools of Albany are the schools of the whole city. . . . The school which is nearest to his [an inhabitant's] residence is no more his than that which is most distant." [216]

From 1870 to 1900, Boston school authorities, for reasons of economy, deliberately built new schools in areas removed from the center of "neighborhoods." [217] In Hempstead, N.Y., geographical attendance zones were established for the first time in

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that voters who pay a poll tax will be interested in furthering the State's welfare when they vote.

In *Rinaldi* v. *Yeager*, 384 U.S. 305 (1966), the Court struck down a New Jersey statute permitting the State to withhold the pay of a prisoner to reimburse the county for the cost of a transcript in an unsuccessful appeal of his conviction. As in the *Douglas* case, the statute had a rational basis in the policy of deterring frivolous appeals.

[209] *Brown* v. *Board of Education* 347 U.S. 483, 493 (1954).

[210] *Bell* v. *School City of Gary*, 213 F. Supp. 819, 829 (N.D. Ind.), aff'd, 324 F. 2d 209 (7th Cir. 1963).

[211] 358 U.S. 1, 25 (1958).

[212] *Taylor* v. *Board of Education* (New Rochelle), 191 F. Supp. 181, 195 (S.D. N.Y. 1961), aff'd, 294 F. 2d 36 (2d Cir. 1961).

[213] *Maryland Committee* v. *Tawes*, 377 U.S. 656, 675 (1964).

[214] *Lucas* v. *Forty-fourth General Assembly of Colorado*, 377 U.S. 713, 738 (1964).

[215] *People et rel. Dietz* v. *Easton*, 13 Abb. Pr. Rep. N.S. (N.Y.) 159, 162 (1872).

[216] *Ibid.*

[217] Warner, "Streetcar Suburbs," *The Process of Growth in Boston, 1870–1890* (1962) 159.

1949.[228] Before 1961, Newark, N.J. schools apparently were not geographically districted.[229] Baltimore, like hundreds of Southern school systems, follows an open enrollment or free choice policy, under which students have a choice of schools.

Nor has there been any consistent pattern of assigning children to schools in their "neighborhoods" even where school systems have employed geographic zoning. Geographic attendance areas were much larger at a time when the population was less dense and the school population was dispersed over a wide area. With increasing population density, school systems have telescoped attendance areas, but the purpose is to prevent overcrowding, not to afford children advantages supposedly stemming from attendance at a school in one's "neighborhood." The particular boundaries of geographic attendance areas have not been determined by the boundaries of "neighborhoods" in the social sense, but have been born of convenience, so as to coincide with such barriers as natural boundaries, railroad tracks and highways Many school systems have abandoned so-called neighborhood schools where educational considerations—such as a need to eliminate racial imbalance—have so dictated.

The "neighborhood school policy," on the other hand, often has served as a convenient rationalization for refusing to integrate the schools. The ironic contradiction was noted by the Court of Appeals for the Fifth Circuit when in a recent case, the Mobile, Ala. School Board urged upon the court the importance of preserving the "neighborhood school":

> Both in the testimony and in the briefs, much is said by the appellees about the virtues of "neighborhood schools." Of course, in the brief of the Board of Education, the word "neighborhood" doesn't mean what it usually means. When spoken of as a means to require Negro children to continue to attend a Negro school in the vicinity of their homes, it is spoken of as a "neighborhood" school plan. When the plan permits a white child to leave his Negro "neighborhood" to attend a white school in another "neighborhood" it becomes apparent that the "neighborhood" is something else again. As every member of this court knows, there are neighborhoods in the South and in every city of the South which contain both Negro and white people. So far as has come to the attention of this court, no board of education has yet suggested that every child be required to attend his "neighborhood school" if the neighborhood school is a Negro school. Every Board of Education has claimed the right to assign every white child to a school other than the neighborhood school under such circumstances. And yet, when it is suggested that Negro children in Negro neighborhoods be permitted to break out of the segregated pattern of their own race in order to avoid the "inherently unequal" education of "separate educational facilities," the answer too often is that the children should attend their "neighborhood school." So, too, there is a hollow sound to the superficially appealing statement that school areas are designed by observing safety factors, such as highways, railroads, streams, etc. No matter how many such barriers there may be, none of them is so grave as to prevent the white child whose "area" school is Negro from crossing the barrier and enrolling in the nearest white school even though it be several intervening "areas" away.[230]

Similarly, in 1965, in an Oklahoma City school desegregation suit, a Federal district court noted the historical willingness of the school authorities in that city to sacrifice the neighborhood school policy to preserve segregation.[231]

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[228] *Matter of School District No. 1, Village of Hempstead,* 70 [N.Y.] State Dept. Rep. 108, 109 (1949).

[229] Hearings in Newark, N.J., before the U.S. Commission on Civil Rights, Sept. 11–12, 1962, p. 232.

[230] *Davis* v. *Board of School Commissioners of Mobile County,* 364 F. 2d 896, 901 (5th Cir. 1966)

[231] "The history of the Oklahoma [City] school system reveals that the Board's commitment to a neighborhood school policy has been considerably less than total. During the period when the schools were operated on a completely segregated basis, state laws and board policies required that all pupils attend a school serving their race which necessitated pupils bypassing schools located near their residences and traveling considerable distances to attend schools in conformance with the racial patterns. After the *Brown* decision and the Board's abandonment of its dual zone policy, a minority to a majority transfer rule was placed in effect, the express purpose

To sum up, there is no historical tradition under which school systems uniformly have assigned students to "neighborhood" schools. In any event, neither tradition nor rationality can afford a basis for upholding, notwithstanding the 14th amendment, a State policy affecting persons unequally with respect to a right of a fundamental nature. This is especially true of a State policy which has the effect of discriminating against the very class of people who the 14th amendment was designed to protect.[222]

(6) *The Responsibility of the Federal and State Governments for Residential Segregation*

There is still another basis upon which Congress could conclude that it is authorized by the Constitution to correct adventitious school segregation.

Residential segregation, which, in conjunction with the neighborhood school policy and other discretionary policies of school boards is in large measure responsible for racial isolation in the schools, is a product of many factors, but racially discriminatory policies of both the Federal and State Governments have played a large role.

a. A principal impetus to housing discrimination during the 1930's and 1940's—years of heavy migration of Negroes from the South to the North and suburban expansion—was the policy of the Federal Housing Administration. The 1935 and 1936 Underwriting Manuals of the FHA recommended the insertion of racial covenants in deeds [223] and warned that "inharmonious racial or nationality groups" or "incompatible racial element[s]" would reduce the value of property.[224] The 1938 FHA Manual advised: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes." [225] For a period of time even after the Supreme Court's decision in *Shelley* v. *Kraemer* (holding that judicial enforcement of such covenants was unconstitutional), FHA continued to treat racial integration of housing as a reason for denying benefits to an applicant.[226] The damage caused by FHA's policies was widespread.

> FHA's espousal of the racial restrictive covenant helped spread it throughout the country. The private builder who had never thought of using it was obliged to adopt it as a condition for obtaining FHA insurance. . . .
>
> FHA succeeded in modifying legal practice so that the common form of deed included the racial covenant. Builders everywhere became the conduits of bigotry. . . .
>
> The evil that FHA did was of a peculiarly enduring character. Thousands of racially segregated neighborhoods were built, millions of people re-assorted on the basis of race, color, or class, the differences built in, in neighborhoods from coast to coast.[227]

The active intervention of FHA on the side of racial restrictions constituted a violation of the 5th amendment, which contains a due process clause prohibiting the Federal Government from imposing racial classifications which deny equal protection to Negroes.[228] Even without a special delegation of authority, Congress has inherent power to implement, by positive legislation, a right granted or secured by

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of which was to enable pupils to transfer from the schools located nearest their residences, i.e., the neighborhood school, in order to enroll in schools traditionally serving pupils of their race, and located outside their immediate neighborhood. . . . Thus, it appears that the neighborhood school concept has been in the past, and continues in the present to be expendable when segregation is at stake." *Dowell* v. *School Board* (Oklahoma City), 244 F. Supp. 971, 977 (W.D. Okla. 1965) remanded on other grounds, civil No. 8523, 10th Cir., Jan. 23, 1967.

[222] See *Strauder* v. *West Virginia*, 100 U.S. 303 (1879). *Slaughter-House Cases*, 16 Wall. 36, 67, 71–72 (1892).

[223] FHA Underwriting Manual, part II, §§ 309, 310 (1935); part II, § 228 (1936).

[224] *Id.* at part II, § 310 (1935); part II, § 266 (1936). See also part II, §§ 315, 330 (1935); part II, §§ 229, 252, 284 (1936).

[225] *Id.* at part II, § 937 (1938). See also Part II, §§ 935, 951 (1938).

[226] 334 U.S. 1 (1948). Abrams, *Forbidden Neighbors,* 233 (1955); Weaver, *The Negro Ghetto,* 71–73 (1948).

[227] Abrams, *Forbidden Neighbors* 234–36 (1965). See also Weaver, *The Negro Ghetto* 71–73 (1948); Abrams, *The City Is the Frontier* 61–62 (1965).

[228] *Bolling* v. *Sharpe,* 347 U.S. 497 (1954).

the Constitution.[229] Congress reasonably could conclude that, in order to secure 5th amendment due process rights, it is necessary to require the States to insure that housing segregation, for which the Federal Government is in part responsible, is not compounded by reflection in the schools. To dispel the lingering effects of the Federal Government's past violations of the 5th amendment, Congress may require the correction of adventitious school segregation. This conclusion would be reasonable regardless of whether Congress could require the correction of such segregation absent the complicity of the Federal Government in segregated housing patterns.

b. By the same token, support for congressional legislation also can be found in the power of Congress, under section 5 of the 14th amendment, to dispel school segregation resulting from housing discrimination to which racially discriminatory action, and action otherwise in contravention of the 14th amendment, of non-school State agencies has contributed. Since Congress may prohibit conduct which is beyond the self-executing ban of the 14th amendment in order to enforce a right under the amendment against the State,[230] it may override State school laws or policies which cannot be disentangled from governmental violations of the 14th amendment in the housing area.

Although local ordinances requiring residential segregation were held unconstitutional by the Supreme Court in 1917 (*Buchanan* v. *Warley*),[230a] cities continued to enforce such ordinances for many years thereafter,[231] some even as late as the 1950's.[232] In 1929, the Houston City Planning Commission recommended setting aside areas within the city for Negro residence,[233] reasoning:

> . . . Negroes are a necessary and useful element in the population and suitable areas with proper living and recreation facilities should be set aside for them. Because of long established racial prejudices, it is best for both races that living areas be segregated. Segregation by zoning has been proven unconstitutional, therefore the best method is by mutual agreement.[234]

The Commission then went on to recommend that three large areas, where Negroes already resided (San Felipe, the northeast portion of the fifth ward, and the southeast portion of the fifth ward) be set aside. It also recommended developing smaller districts then inhabited by Negroes because "small districts, if properly located suitable to white residence districts, furnish convenient living places for servants."[235] It is not known whether, or how, the Commission's recommendations were carried out. However, in 1960, the Negro population was concentrated in the three areas specified by the Commission, as well as in several other smaller areas.[236]

As the prohibition in *Buchanan, supra,* gradually took effect, the racial restrictive covenant gained widespread use. It was judicially enforced, particularly in the

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[229] See *Strauder* v. *West Virginia,* 100 U.S. 303, 310–11 (1880). This congressional power was settled in the decisions upholding the Fugitive Slave Acts of 1793 and 1850 (*Prigg* v. *Pennsylvania,* 16 Pet. 539 (1842); *Ableman* v. *Booth,* 21 How. 506 (1859)), and it is the necessary assumption of the cases upholding Federal legislation protecting the right to vote in presidential elections—which the Constitution does not expressly empower Congress to regulate. *Burroughs and Cannon* v. *United States,* 290 U.S. 534 (1934). See also *Ex parte Yarborough,* 110 U.S. 651, 658 (1884).

[230] See the opinion in *United States* v. *Guest,* 383 U.S. 745, 784 (1966).

[230a] 245 U.S. 60 (1917).

[231] *Bowen* v. *City of Atlanta,* 159 Ga. 145, 125 S.E. 199 (1924); *Liberty Annex Corp.* v. *City of Dallas,* 19 S.W. 2d 845 (Tex. Civ. App. 1929); *Allen* v. *Oklahoma City,* 175 Okl. 421, 52 P. 2d 1054 (1935); *Clinard* v. *City of Winston-Salem,* 217 N.C. 119, 6 S.E. 2d 867 (1940).

[232] *Birmingham* v. *Monk,* 185 F. 2d 859 (5th Cir. 1950), cert denied, 341 U.S. 940 (1951). See also *Jimerson* v. *Bessemer,* Civil No. 10054, N.D. Ala. (1962), where it was observed that the zoning ordinance had only been repealed "several years ago."

[233] *Report of the City Planning Commission,* Houston, Tex., the Forum of Civics, Dec. 1929, pp. 25–28.

[234] *Id.* at 25.

[235] *Id.* at 25, 27.

[236] Telephone interview with Prof. William McCord, Department of Sociology and Anthropology, Rice University, Dec. 21, 1966.

North,[237] until 1948 when the Supreme Court held that State judicial enforcement of such a covenant violated the 14th amendment (*Shelley* v. *Kraemer*).[238] During the time that elapsed between *Buchanan* and *Shelley,* extensive use was made of the racially restrictive covenant.

One writer has said that the failure of the courts to strike down racially restrictive covenants during this period:

> helped establish the current pattern of urban segregation and suburban exclusion which is accelerating racial tensions in American communities. Considering that more than seven million houses were built in the 1920's during the Negro migration, only a small fraction of them for Negroes, the restrictive covenant may leave its influence upon American racial patterns and biases for generations ahead.[239]

In 1953 the Supreme Court, five years after *Shelley,* held that a State court may not, constitutionally, award damages for the violation of a racially restrictive covenant.[240] Although racially restrictive covenants no longer are enforceable, residential patterns established with the assistance of such covenants still persist.[241]

State and local governments also have discriminated on the basis of race in the administration of public housing projects. Only a generation ago, segregated projects for Negroes and whites were approved for Philadelphia.[242] The constitutionality of such a program was still being litigated in Detroit in 1955.[243] Reports to the U.S.

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[237] Covenants were court enforced in the following States: Alabama: *Wyatt* v. *Adair,* 215 Ala. 363 (1926); California: *Los Angeles Inv. Co.* v. *Gary,* 181 Calif. 680 (1919), *Janss Investment Co.* v. *Walden,* 196 Calif. 753 (1925), *Wayt* v. *Patee,* 205 Calif. 46 (1928), *Fairchild* v. *Raines,* 24 Calif. 812, 151 P. 2d 260 (1944), *Stone* v. *Jones,* 66 Adv. Calif. App. 313, 152 P. 2d 19 (1944), *Burkhardt* v. *Lofton,* 63 Calif. App. 2d 230, 146 P. 2d 720 (1943), *Littlejohns v. Henderson,* 111 Calif. App. 115, 295 Pac. 95 (1931), *Shideler* v. *Roberts,* 69 Calif. App. 2d 549, 160 P. 2d 67 (1945); Colorado: *Chandler* v. *Ziegler,* 88 Colo. 1 (1930), *Steward v. Cronan,* 105 Colo. 393 (1940); Georgia: *Dooley* v. *Savannah Bank & Trust Co.,* 199 Ga. 353 (1945); Illinois: *Burke* v. *Kleiman,* 277 Ill. App. 519, 534 (1934); Kansas: *Clark* v. *Vaughan,* 131 Kans. 438 (1930); Kentucky: *United Cooperative Realty Co.* v. *Hawkins,* 269 Ky. 563 (1937); Louisiana: *Queensborough Land Co.* v. *Cazeaux,* 136 La. 724 (1915); Maryland: *Meade* v. *Dennistone,* 173 Md. 295 (1938), *Scholtes* v. *McColgan,* 184 Md. 480, 487–88 (1945); Michigan: *Parmalee* v. *Morris,* 218 Mich. 625 (1922), *Schulte* v. *Starks,* 238 Mich. 102 (1927), *Porter* v. *Barrett,* 233 Mich. 373 (1925), *Malicke* v. *Milan,* 320 Mich. 65, 30 N.W. 2d 440 (1948), *Mrsa* v. *Reynolds,* 317 Mich. 632, 27 N.W. 2d 40 (1947), *N.W. Civic Assn.* v. *Sheldon,* 317 Mich. 416, 27 N.W. 2d 36 (1947), *Sipes* v. *McGee,* 316 Mich. 614 (1947), rev'd, 334 U.S. 1; Missouri: *Koehler* v. *Rowland,* 275 Mo. 573 (1918), *Porter* v. *Pryor,* 164 S.W. 2d 353 (Mo. 1942), *Porter* v. *Johnson,* 232 Mo. App. 1150 (1938), *Thornhill* v. *Herdt,* 130 S.W. 2d 175 (Mo. App. 1939), *Swain* v. *Maxwell,* 196 S.W. 2d 780, 355 Mo. 448 (1946), *Kraemer* v. *Shelley,* 355 Mo. 814, 198 S.W. 2d 679 (1947), rev'd, 334 U.S. 1 (1948), *Weiss* v. *Leaon,* 359 Mo. 1054, 225 S.W. 2d 127 (1949); New Jersey: *Lion's Head Lake* v. *Brzezinski,* 23 N.J. Misc. 290 (1945); New York: *Ridgway* v. *Cockburn,* 163 Misc. 511 (1937), *Dury* v. *Neely,* 69 N.Y. Supp. 2d 677 (1942) *Kemp* v. *Rubin,* 188 Misc. 310 (1947); North Carolina: *Vernon* v. *R. J. Reynolds Realty Co.,* 226 N.C. 58 (1946); Ohio: *Parkins* v. *Trustees of Monroe Ave. Church,* 79 Ohio App. 457 (1946), rev'd, 334 U.S. 813; Oklahoma: *Lyons* v. *Wallen,* 191 Okla. 567 (1942), *Hemsley* v. *Sage,* 194 Okla. 669 (1944), *Hemsley* v. *Hough,* 195 Okla. 298 (1945); Texas: *Liberty Annex Corp.* v. *Dallas,* 289 S.W. 1067 (1927); West Virginia: *White* v. *White,* 108 W. Va. 128, 147 (1929); Wisconsin: *Doherty* v. *Rice,* 240 Wisc. 389 (1942); District of Columbia: *Corrigan* v. *Buckley,* 271 U.S. 323 (1924), *Torrey* v. *Wolfes,* 6 F. 2d 702 (1925), *Cornish* v. *O'Donoghue,* 20 F. 2d 983 (1929), *Russell* v. *Wallace,* 30 F. 2d 981 (1929), *Edwards* v. *West Woodridge Theater Co.,* 55 F. 2d 524 (1931), *Grady* v. *Garland,* 89 F. 2d 817 (1937), *Hundley* v. *Gorewitz,* 132 F. 2d 23 (1942), *Mays* v. *Burgess,* 147 F. 2d 869 (1945), *Bogan* v. *Saunders,* 71 F. Supp. 587 (1947); *Hurd* v. *Hodge,* 82 App. D.C. 180, 162 F. 2d 233 (1947), rev'd, 334 U.S. 24 (1948).

[238] 334 U.S. 1 (1948).

[239] Abrams, *Forbidden Neighbors* 220 (1955).

[240] *Barrows* v. *Jackson,* 346 U.S. 249 (1953).

[241] See p. 20, supra.

[242] *Favors* v. *Randall,* 40 F. Supp. 743 (E.D. Pa. 1941).

[243] *Detroit Housing Commission* v. *Lewis,* 226 F. 2d 180 (6th Cir. 1955).

Commission on Civil Rights showed that segregation in public housing was being practiced in Kentucky, Missouri, and Tennessee in 1961.[244]

Local governments perpetuate segregated residential areas in other ways. Builders and lenders say that local governments are a "major source of restrictions on their freedom to choose sites" where minority or open-occupancy housing is involved.[245] Local officials may obstruct by abusing their authority to issue building permits, provide sewage facilities, and administer building inspection standards.[246] Land is difficult to find in areas which local officials will approve for minority housing.[247] There is not, however, a continuing controversy over minority housing sites because, as one commentator points out:

> . . . racial restrictions on residential land use, like an iceberg, are of known presence but mostly invisible. It is only when a builder miscalculates or is prepared to fight that restrictions come into public view. Builders normally do not go looking for sites or attempt to build for nonwhites in areas known to be restricted, because they know, in the words of a Los Angeles builder, "there would be no inspections and no permits and he would be out of business." [248]

See *Progress Development Corporation* v. *Mitchell*,[249] where it was alleged that the village trustees used the local ordinances relating to the building code in "seeking to harass, impede, delay, and otherwise prevent the construction of homes by Progress and the sale of some of said homes to Negroes." [250] In another case, an incorporated area made it known that if certain properties were sold to Negroes, the building regulations would be made more stringent so that new homes would not be built.[251] In that case an ordinance required that the depth of wells be no less than 400 feet in the geographic area into which Negroes were buying, while homes already built (and owned by whites) in that area and other areas of the town ranged from 100 to 270 feet in depth and were not subject to the ordinance. Regulations as to septic tank laterals also were used to discourage Negroes from buying property and building homes in a particular area.

Local governmental bodies also have used the power of eminent domain to prevent Negroes from living in all-white neighborhoods. In *Wiley* v. *Richland Water District*,[252] the land upon which a Negro family had planned to construct a home was condemned by the local water district for future development and sanitation control. In *City of Creve Coeur* v. *Weinstein*,[253] the court upheld the condemnation for present recreational facilities of land in a previously all-white neighborhood owned by a Negro family.[254]

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[244] USCCR, *The 50 States Report*, 173, 329, 591 (1961). In *Thompson* v. *Housing Authority of the City of Miami*, 251 F. Supp. 121 (S.D. Fla. 1966), it was alleged that a public housing authority constructed housing projects on sites located in Negro neighborhoods for the purpose of containing the Negro population. The court held, however, that the mere fact that the projects were constructed in the Negro neighborhood was not enough to overcome the presumption of regularity.

It also has been alleged that Federal and local governments discriminate in their urban redevelopment programs contributing to the maintenance of residential segregation. See *Deal* v. *Cincinnati Board of Education*, 244 F. Supp. 572 (S.D. Ohio 1965), rev'd on other grounds, No. 16863, 6th Cir., Dec. 6, 1966, where exhibits were offered in evidence, but rejected by the court, to show that lists in which properties are restricted on the basis of race were used to assist people in relocation.

[245] McEntire, *Residence and Race* 186, 187 (1960).

[246] *Id.* at 186.

[247] *Ibid.*

[248] *Id.* at 187.

[249] 286 F. 2d 222 (7th Cir. 1961).

[250] *Id.* at 226. See also *Deerfield Park* v. *Progress Development Corp.*, 26 Ill. 2d 296, 186 N.E. 2d 360 (1962), cert. denied 372 U.S. 968 (1963).

[251] *Anderson* v. *Town of Forest Park*, 239 F. Supp. 576, 583 (W.D. Okla. 1965) (cited in *Dowell* v. *School Board of Oklahoma City Public Schools*, 244 F. Supp. 971 (W.D. Okla. 1965)).

[252] Civil No. 60–207, D. Ore., June 30, 1960, 5 *Race Rel. L. Rep.* 788 (1960).

[253] 329 S.W. 2d 399 (St. Louis Ct. App. 1959).

[254] See also *Western Springs Park District* v. *Falls*, Civil No. 52–C–14741 (Cook Co. Cir. Ct. Ill. 1953); *Progress Development Corp.* v. *Mitchell*, 286 F. 2d 222 (7th Cir. 1961).

Congressional imposition of a duty to disestablish school segregation deriving in large measure from past discrimination of State and local governments would be consistent both with judicial decisions in the area of constitutional law and with general legal principles.

In *Dowell* v. *School Board of Oklahoma City*,[255] the court found that residential segregation for which the State was responsible was a significant factor in school segregation. The court noted that "Negroes in Oklahoma City reside in certain definite areas, which areas were designated as such originally by virtue of State law and were continued through the general use of restrictive covenants" and that the neighborhood school policy, "when superimposed over already existing residential segregation initiated by law in Oklahoma City, leads inexorably to continued school segregation."[256] In these circumstances, the court held, the neighborhood school policy, without any provision for mitigating the effect of residential segregation, contravened the equal protection clause of the 14th amendment. The court entered a decree under which any student whose race was in the majority in the school he attended could transfer to a school in which his race would be in the minority, enabling Negro students trapped in Negro schools to transfer out and obtain an integrated education.[257] The *Dowell* case is consistent with the principle familiar in the law that the party responsible for a wrong must "disentangle the consequences for which it was chargeable" or bear responsibility for the whole.[258]

There is nothing novel in the proposition that, by indulging in one unconstitutional act, a State is barred from engaging in action otherwise within its power because such action would perpetuate the unconstitutionality. An otherwise valid voter qualification may not be applied constitutionally where its effect would be to raise standards above those applicable at a time when Negroes were discriminatorily excluded from the franchise, at least where white persons registered during such time remain on the registration rolls.[259] State requirements that a voter registration applicant be identified by registered voters, when only white persons are on the registration rolls, contravene the 14th amendment.[260] The Houston School Board, which long had applied, indiscriminately to Negroes and whites, a "brother-sister" rule which required children in Grades 1 through 6 to attend the same school as an older brother and sister, was enjoined from applying the rule because it perpetuated school segregation which had been compelled by law.[261] A State university's requirement that an applicant for a master's degree be a graduate of an accredited college—applicable equally to Negroes and whites—was held to deny equal protection to a Negro who had been ineligible because of his race to attend an accredited undergraduate State college in the State, and instead had graduated from one of the two State colleges—both unaccredited—which Negroes were permitted to attend.[262] Similarly, a State alumni sponsorship requirement at a State institution having no Negro alumni was held to be an unconstitutional discrimination against Negroes.[263] In each case the State was not permitted to apply an otherwise innocuous policy because it would have perpetuated unconstitutional discrimination.

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[255] 244 F. Supp. 971 (W.D. Okla. 1965) remanded on other grounds, Civ. No. 8523, 10th Cir., Jan. 23, 1967.

[256] *Id.* at 975, 976.

[257] See also *Holland* v. *Board of Public Instruction of Palm Beach County,* 258 F. 2d 730 (5th Cir. 1958), where the Fifth Circuit found that "in the light of compulsory residential segregation of the races by city ordinance, it is wholly unrealistic to assume that the complete segregation existing in the public schools is either voluntary or the incidental result of valid rules not based on race" (*Id.* at 732); *Ludley* v. *Board of Supervisors,* 150 F. Supp. 900 (E.D. La. 1957), aff'd, 252 F. 2d 372 (5th Cir. 1958), where an otherwise innocuous statute was held "unconstitutional when applied in tandem with" another statute. And see *Bush* v. *Orleans Parish School Board,* 138 F. Supp. 337 (E.D. La. 1956), aff'd, 242 F. 2d 156 (5th Cir. 1957). *Parker* v. *Franklin,* 223 F. Supp. 724 (M.D. Ala. 1963), modified and aff'd, adopting the opinion of the district court, 331 F. 2d 841 (5th Cir. 1964); *Ross* v. *Dyer,* 312 F. 2d 191 (5th Cir. 1963).

[258] *National Labor Relations Board* v. *Remington Rand, Inc.,* 94 F. 2d 862, 872 (2d Cir. 1938), cert. denied, 304 U.S. 576 (1938). Thus, when an employer has dominated and supported a labor organization, the organization will be forever disestablished even though the employer's misconduct has ceased, even though some employees may freely prefer it, and even though a majority of the employees might vote to have it represent them. *Texas and N.O.R. Co.* v. *Brotherhood of Railway and S.S. Clerks,* 281 U.S. 548 (1930); *National Labor Relations Board* v. *Southern Bell Co.,* 319 U.S. 50 (1943).

[259] *Louisiana* v. *United States,* 380 U.S. 145 (1965); *United States* v. *Duke,* 332 F. 2d 759 (5th Cir. 1964).

[260] *United States* v. *Ward,* 222 F. Supp. 617, 620 (W.D. La. 1963); *United States* v. *Manning,* 205 F. Supp. 172, 173–174 (W.D. La. 1962).

[261] *Ross* v. *Dyer,* 312 F. 2d 191 (5th Cir. 1962).

C. The Power of Congress To Require Metropolitan Solutions Where Necessary To Secure 14th Amendment Rights

In metropolitan areas, correction of racial isolation in the public schools may require realignment of school districts or cooperative arrangements between districts, including districts in different political subdivisions within a State. This is obviously the case where the school-age population of a particular district or city is majority Negro. As a Federal court once said in another context, "one cannot assimilate alone." [264]

State-created barriers to the reorganization of school districts now exist in many States. In some States, for example, changes in school district boundaries involving merger or annexation can be accomplished only by popular referenda, or by the State itself. But Congress is not bound to respect these barriers. School district lines, like State legislative district lines,[265] congressional district lines,[266] and other creations of States and political subdivisions, must yield to the overriding demands of the Federal Constitution and Federal laws enacted pursuant thereto.[267]

The equal protection clause speaks to the State itself.[268] As Mr. Justice Brandeis once stated: "It is a question of the power of the state as a whole . . . the powers of the several state officials must be treated as if merged in a single officer." [269] A State cannot avoid its obligation under the equal protection clause by fragmenting the decision making or by pleading the very political lines which the State itself created. Political subdivisions of States, such as counties and cities, are "created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them" and the "number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the state." [270]

The principle was recognized by the Supreme Court in the reapportionment cases. In *Reynolds* v. *Sims*,[271] the Court struck down, as violative of the equal protection clause, a reapportionment plan under which each of Alabama's 67 counties was allotted one senator and no counties were given more than one senate seat. The defendants sought to justify the plan by analogizing the scheme to that used for apportioning seats in Congress. But the Court rejected this so-called Federal analogy, pointing out that "political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of State governmental functions." [272]

We need not inquire whether congressional power to relieve racial isolation would extend beyond school district or political subdivision lines if education were an exclusively local function. In every State of the Union, the State itself is deeply involved in the educational process. The States directly supply part of the money for the operation of the schools. They certify the teachers and accredit the schools. Through their departments of education, they maintain constant supervision over the entire operation and they are the conduits through which Federal money in increasing amounts is funneled into the public schools.[273]

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[262] *Parker* v. *Franklin*, 223 F. Supp. 724 (M.D. Ala. 1963), modified and aff'd, adopting the opinion of the district court, 331 F. 2d 841 (5th Cir. 1964).

[263] *Meredith* v. *Fair*, 298 F. 2d 696 (5th Cir. 1962), cert. denied, 371 U.S. 828 (1962); *Hunt* v. *Arnold*, 172 F. Supp. 847 (N.D. Ga. 1959).

[264] *Farrington* v. *Tokushige*, 11 F. 2d 710, 714 (9th Cir.), aff'd, 273 U.S. 284 (1927).

[265] *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

[266] *Wesberry* v. *Sanders*, 376 U.S. 1 (1964).

[267] See *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); U.S. Const., art. VI.

[268] *Griffin* v. *County School Board*, 377 U.S. 218 (1964); *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649 (E.D. La. 1961), aff'd, 287 F. 2d 326 (5th Cir. 1961), aff'd, 368 U.S. 515 (1962).

[269] *Iowa-Des Moines National Bank* v. *Bennett*, 234 U.S. 239, 244–45 (1931).

[270] *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178 (1907).

[271] 377 U.S. 533 (1964).

[272] *Id.* at 575. See also *Gray* v. *Sanders*, 372 U.S. 368, 378, 379 (1963).

Every State has included provisions for free public education in its constitution and general statutes. No State remains entirely indifferent to what the localities do. Thus, in *City of Louisville v. Commonwealth* [274]—a decision requiring a local community to levy taxes for school purposes—the Court said:

> . . . education is not a subject pertaining alone, or pertaining essentially, to a municipal corporation. Whilst public education in this country is now deemed a public duty in every State, . . . it has never been looked upon as being at all a matter of local concern only. . . . In this State the subject of public education has always been regarded and treated as a matter of State concern.[275]

Comparable rulings are found in many jurisdictions.[276]

In *Hall* v. *St. Helena Parish School Board,*[277] the State of Louisiana, to avoid the effect of Federal court orders requiring school desegregation, enacted a statute authorizing any parish in the State to close its schools by local option vote. A three-judge Federal court held this statute unconstitutional, in part "because its application in one parish, while the State provides public schools elsewhere, would unfairly discriminate against residents of that parish, irrespective of race." The defendants had laid "particular stress" on the local option feature of the statutory plan. Conceding that a legislative or gubernatorial directive closing the public schools in only one parish would be unconstitutional, the defendants maintained "that there is no denial of equal protection when the same result is achieved through a decision of the local authorities rather than the central State government." [278] The defendants relied upon cases in which Federal courts had upheld closure by municipal authorities to avoid desegregation of all swimming pools or all parks within their jurisdictions.[279] Rejecting the proposed analogy, the court declared:

> The St. Helena Parish School Board may not be discriminating geographically when it expends the full measure of its power by closing all schools under its control, but that does not make the rule of *Tonkins* and *Gilmore* applicable. Indeed, even if recreation is viewed in the same constitutional light as public education, the rationale of those cases applies only when the facilities sought to be closed are locally owned, financed, and administered, and the State itself is not directly concerned in their operation. [Citation omitted.] In such case, only local action is involved, and so long as the closure order is general and affects all residents equally, there is no discrimina-

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[273] Wright, "Public School Desegregation: Legal Remedies for De Facto Segregation," 16 W. Res. L. Rev. 478, 498 (1965).

[274] 134 Ky. 488, 121 S.W. 411 (1909).

[275] *Id.* at 492, 493, 121 S.W. at 411, 412.

[276] See, e.g., *Malone* v. *Hayden,* 329 Pa. 213, 197 Atl. 344, 352 (1938); *Bissel* v. *Davison,* 65 Conn. 183, 32 Atl. 348, 349 (1894); *People ex rel. Nelson* v. *Jackson Highland Building Corp.,* 400 Ill. 533, 81 N.E. 2d 578, 580–81 (1948); *Grant* v. *Michaels,* 94 Mont. 452, 23 P. 2d 266, 271 (1933); *County Board* v. *Board of Commissioners,* 201 Ga. 815, 41 S.E. 2d 398 (1947); *Hobbs* v. *Lawrence County,* 193 Tenn. 608, 247 S.W. 2d 73, 76 (1952) (dictum); *Moseley* v. *Welch,* 209 S.C. 19, 39 S.E. 2d 133, 138 (1946) (dictum); *Duncan* v. *People ex rel. Moser,* 89 Colo. 149, 299 Pac. 1060, 1061 (1931); *Fiscal Court* v. *Board of Education,* 294 Ky. 758, 172 S.W. 2d 624 (1943); *Mayor & City Council of Wilmington* v. *State ex rel. Du Pont,* 44 Del. 332, 57 A. 2d 70 (1947); *Posey* v. *Board of Education,* 199 N.C. 306, 154 S.E. 393 (1930); *City of Franklin* v. *Hinds,* 101 N.H. 344, 143 A. 2d 111 (1958). See also the opinions of the Louisiana courts cited in *Hall* v. *St. Helena Parish School Board, infra,* at 657.

[277] 197 F. Supp. 649, 656 (E.D. La. 1961), aff'd, 287 F. 2d 326 (5th Cir. 1961), aff'd 368 U.S. 515 (1962).

[278] 197 F. Supp. at 656.

[279] See *Tonkins* v. *City of Greensboro,* 276 F. 2d 890 (4th Cir. 1960); *City of Montgomery* v. *Gilmore,* 277 F. 2d 304 (5th Cir. 1960).

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> tion at any level. But the same principle does not excuse inequalities in a statewide, centrally financed and administered system of public institutions.[280]

"A contrary position," the court said, "would allow a State to evade its constitutional responsibility by carve-outs of small units."[281] So, here, a State cannot avoid its constitutional obligation to afford its schoolchildren equal protection of the laws by pointing to the distribution of power between itself and its subdivisions—a distribution which the State itself has created. "If the rule were otherwise, the great guarantee of the equal protection clause would be meaningless."[282]

In legislating to implement the 14th amendment, Congress need not limit itself to suspending offensive State legislation, but may require States to take affirmative steps—such as the reorganization of school districts—to secure equal rights. In enforcing the 14th amendment the courts have required State governing bodies affirmatively to provide counsel and transcripts to indigents in criminal cases[283] even though the State may have to expend money which the legislature is unwilling to appropriate;[284] to levy taxes to raise funds adequate to reopen and operate a public school system,[285] and to reapportion the State legislature to accord all voters in the State equality of voting power.[286] There is no reason why Congress may not also prescribe affirmative measures, since its enforcement powers under the 14th and 15th amendments have been held to encompass "any rational means" of effectuating the rights declared.[287]

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[280] 197 F. Supp. at 657.

[281] *Id.* at 658.

[282] *Ibid.* It may well be that the substantial fiscal and tangible inequalities which at present exist between city and suburban school districts (see ch. 3, supra, at pp. 87–88) also contravene the 14th amendment's equal protection guarantee. As the court ruled in the *St. Helena* case with respect to education, "when the State provides a benefit, it must do so evenhandedly." See also, *James* v. *Almond,* 170 F. Supp. 331 (E.D. Va. 1959), appeal dismissed per stipulation, 359 U.S. 1006 (1959); *In the Matter of Skipwith,* 14 Misc. 2d 325, 180 N.Y.S. 2d 852 (Dom. Rel. Ct. 1958). The *Brown* rationale itself—that "where a State provides education, it must be provided to all on equal terms"—would appear to render at least those substantial disparities which are readily identifiable—such as disparities in fiscal support, average per pupil expenditure, and average pupil-teacher ratios—unconstitutional. The Supreme Court, moreover, has held that a State cannot, consistently with the equal protection clause, discriminate against persons within its jurisdiction on the basis of where they reside, see *Reynolds v. Sims,* 377 U.S. 533, 560 (1964); *Gray* v. *Sanders,* 372 U.S. 368, 379–80 (1963). And in *Griffin* v. *Illinois,* 351, U.S. 12 (1956), the Court ruled that a State which grants appellate review of a criminal conviction cannot "do so in a way that discriminates against some convicted defendants on account of their poverty." As recognized by Mr. Justice Harlan in his dissent, *Griffin* imposes on the States an affirmative duty "to lift the handicaps flowing from differences in economic circumstances." The Illinois statute on its face created no invidious classification resulting in unconstitutional State-imposed disabilities. Rather, in failing to provide the poor with adequate means of appellate reviews, the State failed "to remove natural disabilities." Here, as in *Griffin,* the State may be under no obligation to provide the service, but having undertaken to provide it, the State must insure that the benefit is received by the poor as well as the rich in substantially equal measure.

[283] *Gideon* v. *Wainwright,* 372 U.S. 335 (1963); *Douglas* v. *California,* 372 U.S. 353 (1963); and *Griffin* v. *Illinois,* 351 U.S. 12 (1956).

[284] See *State* v. *Rush,* 46 N.J. 399, 217 A. 2d 441 (1966).

[285] *Griffin* v. *Prince Edward County School Board,* 377 U.S. 218 (1964).

[286] *Reynolds* v. *Sims,* 377 U.S. 533 (1964). See also, *Moss* v. *Burkhart,* 220 F. Supp. 149 (W.D. Okla. 1963), aff'd per curiam sub nom, *Williams* v. *Moss,* 378 U.S. 558 (1964).

[287] *South Carolina* v. *Katzenbach,* 383 U.S. 301, 324 (1966); *Katzenbach* v. *Morgan,* 384 U.S. 641 (1966).

Precedents for Federal legislation requiring intergovernmental planning include a 1962 amendment to Federal highway legislation applying pressure on States to compel their cities to carry on area transportation planning (Federal-Aid Highway Act of 1962, sec. 9, 76 Stat. 1148, 23 U.S.C. 134 (1964); the Demonstration Cities and Metropolitan Development Act of 1966, P.L. 89–754, 80 Stat. 256, which provides financial incentives for communities which engage in metropolitan planning that

Absent State statutory or State constitutional provisions to the contrary, school district boundaries need not coincide with the boundaries of townships or other subdivisions of the State.[288] To the extent that a particular State has a statutory or constitutional provision to the contrary, it necessarily must yield to a lawful conflicting act of Congress under the supremacy clause of the Constitution.[289]

In many States the boundaries of a school district may be changed by the legislature. In Illinois, for example, "[t]he area of the district may be contracted or expanded, it may be divided, united in whole or in part with another district and the district may be abolished. All this at the will of the legislature." [290] In New York, the State Department of Education has the power to alter school districts. Although a school district in New York is a municipal corporation, it has no territorial integrity and "is always subject to the reserved power of the State, exercised through its administrative officers in the education department, to change its territory according to current educational needs and good educational principles." [291]

Many States provide by statute that any question involving the drawing of school district lines must be submitted to a popular vote.[292] But such a right to vote "is purely a permissive one bestowed by legislative grace in furtherance of the policy of the legislature." [293] In any event, "a citizen's constitutional right can hardly be infringed simply because a majority of the people choose that it be." [294]

Summary

While the *Brown* decision directly invalidated only school segregation compelled or expressly permitted by law, later cases have applied that decision to purposeful school segregation resulting from acts of State or local public officials even where such segregation is not dictated or sanctioned by State or local law. The courts have indicated that such purposeful segregation is unconstitutional even when it is accomplished by inaction rather than by action, and even where it is less than complete.

The courts have not been so ready to declare adventitious school segregation unconstitutional. Thus, the result of most judicial decisions thus far has been to leave the question of remedying racial imbalance to the legislative and executive branches of the Federal and State Governments. Few States have taken any meaningful steps to require school authorities to take corrective action, although the courts have upheld State and local remedial measures against the contention by white parents that it is unconstitutional to take race into account in assigning students to schools.

In the Civil Rights Act of 1964, Congress authorized the Attorney General to bring desegregation suits in certain circumstances; empowered the Office of Education to give technical and financial assistance to desegregated school districts, and gave the De-

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meets Federal criteria, and the Federal Water Pollution Control Act, which requires intergovernmental planning as a prerequisite for Federal aid for solid waste disposal and water and sewer facilities (62 Stat. 1155 (1948), as amended, 33 U.S.C. sec. 466–66K (1964).

[288] *People ex rel. McLain* v. *Gardner,* 408 Ill. 228, 96 N.E. 2d 551, 555 (Ill. Sup-Ct. 1951).

[289] U.S. Const., art VI; *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819).

[290] *People* v. *Deatherage,* 401 Ill. 25, 81 N.E. 2d 581, 586 (1948). In Connecticut the legislature has "broad power over educational policy and instrumentalities". It can establish a school district without the consent of the towns, the State board of education or anyone else." *Regional High School District No. 3* v. *Town of Newton*, 134 Conn. 613, 59 A. 2d 527. 531 (1948). See also *City of Beaumont Independent School District* v. *Broadus*, 182 S.W. 2d 406, 410 (Ct. of Civ. App. of Tex. 1944); *Donnelly* v. *Dover-Sherborn Regional School District,* 170 N.E. 2d 694 (Sup. Ct. of Mass. 1960).

[291] *Board of Education of Union Free School District No. 1* v. *Wilson,* 303 N.Y. 107, 100 N.E. 2d 159, 163 (N.Y. Ct. of App. 1951).

[292] E.g., N.Y. Ed. Law §§ 1504 and 1801.

[293] *People* v. *Deatherage,* 81 N.E. 2d at 588.

[294] *Lucas* v. *Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 737 (1964); *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943); *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649 (E.D. La.), aff'd, 287 F. 2d 326 (5th Cir. 1961), aff'd, 368 U.S. 515 (1962).

partment of Health, Education, and Welfare the power to withhold financial assistance from school districts engaging in discrimination. But this legislation does not appear to dictate the imposition of sanctions solely for failure to overcome racial imbalance in the schools or to authorize assistance to school districts to help them correct such imbalance. Under the Elementary and Secondary Education Act of 1965, HEW encourages efforts to develop project activities which will tend to reduce racial imbalance, but is precluded from requiring the assignment or transportation of students or teachers in order to overcome such imbalances.

Racial isolation in the schools is a matter appropriate for congressional consideration and action. Even if the courts were to hold that there is a constitutional duty to relieve adventitious segregation, congressional action would have many advantages, including uniformity, minimization of delay, relief for already overburdened courts, greater public acceptance, and the important advantage stemming from congressional power to appropriate funds and to provide the financial assistance needed to accomplish the task. The 14th amendment confers the necessary power upon Congress. As the facts in this report show, racial isolation damages Negro children, and denies them equal educational opportunity. There is ample basis for concluding that Congress can enact the laws necessary to prevent such damage and to secure to Negroes equality of opportunity in the public schools.

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